

REPORT

OF

TRIALS IN THE COURTS OF CANADA,

RELATIVE TO THE DESTRUCTION

OF

The Earl of Selkirk's Settlement

ON

THE RED RIVER;

WITH

Observations.

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LONDON:

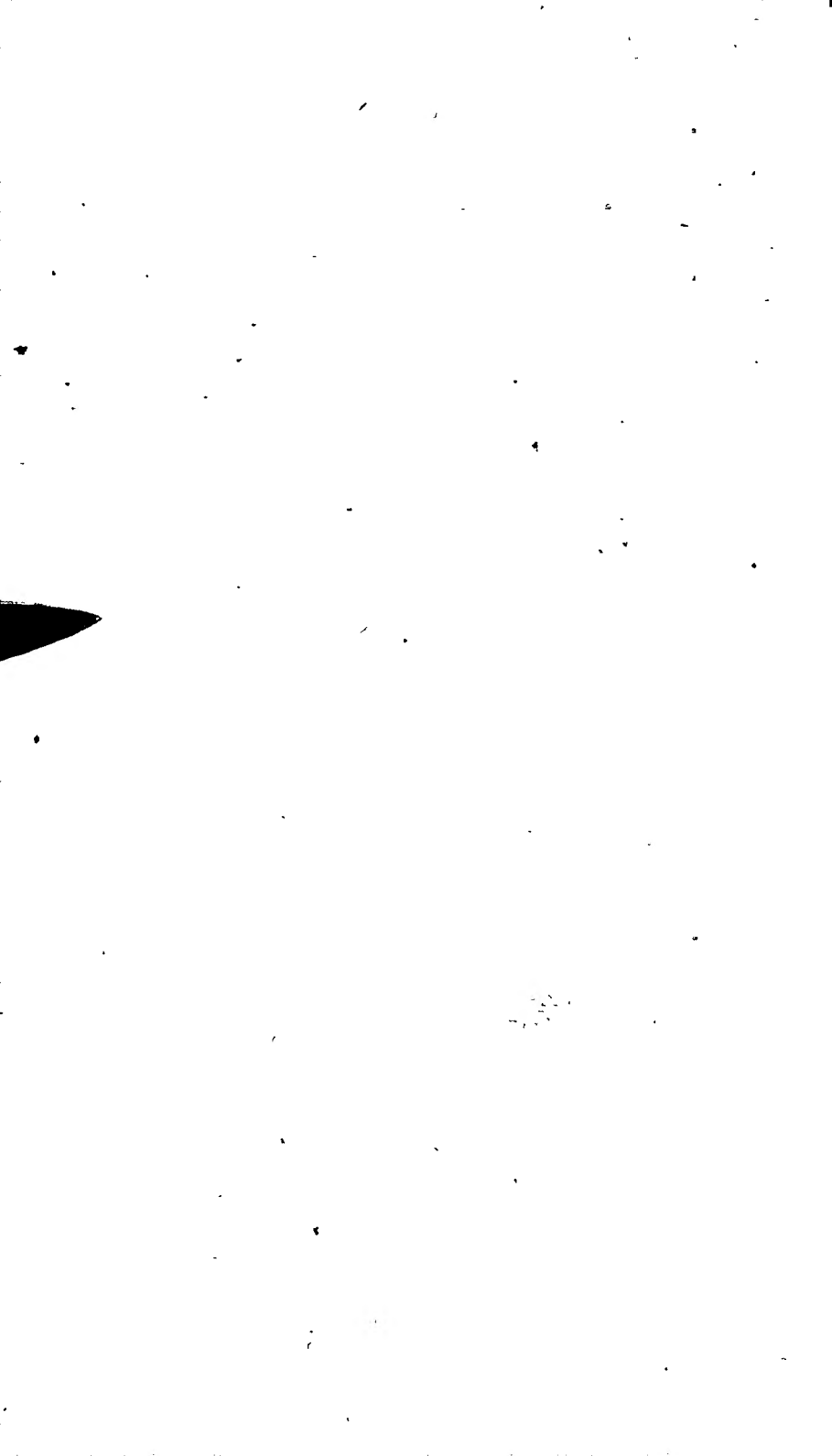
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1820.

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ADVERTISEMENT.

THE Facts related by the Editor in this Volume have been collected from original documents, or have been communicated to him by persons, connected indeed with Lord Selkirk, but who were, for the most part, eye-witnesses of the circumstances to which they speak. If any thing be unsatisfactory in these pages, any thing imperfect, any thing reprehensible, the Editor entreats that it may not operate to prejudice the public mind against the benevolent and enlightened designs of Lord Selkirk. His Lordship's unavoidable absence from this country has prevented his friends from communicating with him in a manner that was desirable. The state of his Lordship's health, shaken and impaired by the difficulties which his zeal for national improvement has encountered, precludes him from doing justice to himself.



P R E F A C E.

THE importance to this country of its territories in North America; their boundless resources; their inducements to colonization are known to the political economist. Their dangers, arising from the vicinity of a formidable and encroaching power, are manifest to every mind. It is necessary for their preservation and improvement, that the British colonist be secured from systematic violence; that the laws to govern him be at least congenial to those of England; that he enjoy an administration of justice neither illiterate nor impure. • It is the object of this publication to pourtray the condition of our principal Settlements in North America, in these interesting points of view; but the outline must necessarily be of limited extent, since the subject will be no further developed than as it is connected with a more confined question, the confutation of some opinions respecting the result of certain legal investigations in Canada.

About three years ago, intelligence was received in this country of the destruction of the Earl of Selkirk's Settlement on the Red River, which had been accomplished in June 1816, for the second time, by the servants of the North-West Company, with the

slaughter of Governor Semple and twenty of his people. The worth of that gentleman's character* was not unknown to the public: nor was the indiscriminate and unsparing massacre of so many British subjects, an occurrence likely to be viewed with indifference in England. But the circumstances of that horrid catastrophe were represented in so very opposite a light in the different narratives which appeared, that most persons were disposed to suspend their judgment upon the subject, under the idea that the matter would come before a court of justice, and that the result of the trials would determine where the truth lay.

In the course of the last year a few cases were brought to trial in the Courts of Lower and Upper Canada, and the following pages contain the whole of the evidence that was then produced, relative to the transactions at Red River.

All the persons who have been tried for the part which it was alleged they had taken in the destruc-

* Mr. Robert Semple, who, in the year 1815, was appointed by the Hudson's Bay Company Governor-in-Chief of their territories and establishments, was the son of an American loyalist, who, in consequence of the revolutionary war, lost his property in America. He was educated to the mercantile profession, and his transactions in business, introduced him to a numerous circle in London, who are well acquainted with the strictness of his principles and the correctness of his conduct. He had a strong natural taste for literature and science, which he lost no opportunity of cultivating. The commercial undertakings in which he was engaged, having led him to make a temporary residence in various remote parts of the world, he published the observations which he had made in the course of these travels in several small works, which bespeak a liberal mind, and have been very favourably received by the public.—(See *Edinburgh Review*, Nos. 22 and 30.)

tion of Lord Selkirk's Settlement, have been acquitted.

The conclusion, which the members of the North-West Company require the public to draw from this circumstance, may be collected from the following extracts appearing in their publications :—

“The result of these proceedings constitutes a
 “triumphant vindication of the parties accused, and
 “a conclusive demonstration, not only of the obvious
 “motives in which these frivolous and vexatious
 “charges originated, but also of the iniquity of the
 “means employed in bolstering them up, by every
 “insidious art to prejudice the public opinion.”

“The serious and alarming charges preferred by
 “the Earl of Selkirk against some of the partners
 “and servants of the North-West Company, have
 “undergone, before the competent tribunals of criminal jurisprudence in Canada, the fullest judicial
 “investigation; and a verdict of acquittal, has been
 “the recorded refutation given to the imputations of
 “Murder and Robbery, which constituted such prominent features in the distorted statements of
 “Lord Selkirk. These trials have been published
 “in this country from the short-hand notes of a
 “sworn law-reporter, and they will furnish to every
 “unprejudiced mind, a clear and satisfactory contradiction to that tissue of calumny, misrepresentation, and fabrication, with which the *ex-parte*
 “publications alluded to abound.”

These verdicts of acquittal must lose their authority if the Jury have been misled by an erroneous exposition of the law. The doctrines promulgated by the Judges, will be canvassed as occasion rises in the course of these pages; but admitting, for the present,

that their interpretation of the law has been uniformly correct, it may still be affirmed, that the result of the trials affords no satisfactory proof of the innocence of the prisoners. This will not appear an extraordinary assertion, when, in the first place, it is understood that a private prosecutor in Canada was not allowed to conduct the proceedings by means of counsel chosen by himself, and that it was not permitted to his counsel even to put a question to any one of the witnesses.

About the end of March 1818, Lord Selkirk wrote to the Attorney-General of Upper Canada, stating to him the impossibility that in cases of such extent and complication as those which had been referred for trial to that Province, the law officers of the Crown could, by any practicable degree of exertion, become as fully masters of the facts and of the evidence as the counsel of the private prosecutors, whose attention had been already for a long period directed to the subject, and on this ground urging him either to allow his Lordship's counsel to take the entire management of the prosecutions in question, or at least to admit them to a full participation in the arrangement of the proceedings, and in the examination of the witnesses.

In order to obviate any doubt, as to the competency of the Attorney-General to accede to this arrangement, his Lordship made an application, at the same time, to the President of the Council, then administering the Government of Upper Canada, requesting that he would recommend to the Attorney-General to allow the participation desired, and that he would give it his official sanction, if that should be deemed necessary. The President returned for answer, by

his secretary, that "His Majesty's law-servants were
 "entirely confided in, as to the course of proceeding
 "in all criminal prosecutions:" and accordingly his
 Lordship was referred, as prosecutor in the cases
 alluded to, "for such concert with the Attorney-
 "General as might be agreeable to that officer."
 This answer certainly appeared to leave the matter
 entirely in the discretion of the Attorney-General.
 Mr. Robinson, who held that office, was of a family
 which is connected with the North-West Company in
 commercial transactions. He had been recently
 appointed to his office by Lord Bathurst; and soon
 after his arrival in Canada, in a letter, dated Novem-
 ber 16, 1817, addressed to a mercantile house in
 Montreal, (who acted as agents to the Earl of Selkirk,)
 he expresses himself as follows: "I was retained by
 "the North-West Company, before I left England,
 "as their counsel in all matters between them and
 "Lord Selkirk, except in those cases in which I may
 "be officially employed as Crown officer." There was
 every reason to suppose that in these circumstances
 this gentleman would be anxious to relieve himself
 from a situation of such delicate responsibility, as that
 of having to conduct prosecutions officially against
 persons with whom he was connected by the ties of
 private friendship, as well as by professional engage-
 ments, and that he would have gladly availed himself
 of the opportunity of devolving the entire management
 of these prosecutions on Lord Selkirk's counsel. The
 answer which he addressed to his Lordship, dated
 April 19 1818, seems to indicate that he was not
 wholly insensible to the delicacy of the predicament
 in which he stood; but, with respect to his practical
 determination, it is not easy to collect any thing from

his letter, the tenor of which (so far as relates to this subject) is as follows : " It seems matter of regret that, " as the greater number of offences of a similar kind " are to be tried in Lower Canada, it should have " been found inexpedient to adopt the same course " with these, which would have saved to the pro- " secutors, prisoners and witnesses much trouble, " delay, and expense, and would have given to your " Lordship, or the prosecutors, a more entire advan- " tage of the assistance of such professional gentlemen " as have had the means of becoming most conversant " with the facts involved in these prosecutions.

" On the part of your Lordship's letter, which has " produced this remark, I can only say (what I trust " is scarcely necessary) that I will on this, as on other " occasions, do my duty to the Crown in the prose- " cution of the offenders, as well as I may be enabled " from the means of preparation placed within my " reach, without any consideration of any interests " but those of public justice; and that any instruction " or assistance which your Lordship, as prosecutor, " or your Lordship's counsel can properly render, I " shall be desirous to avail myself of in the most " ample manner, consistent with the course of pro- " ceeding at our bar."

As this conveyed no definitive or intelligible answer to the main point of Lord Selkirk's inquiries, *viz.* how far his counsel could be admitted to conduct the prosecutions and to examine the witnesses, his Lordship took the first opportunity of conversing personally with Mr. Robinson, in order to request an explanation of that part of his letter in which he speaks of "*the course of proceeding at our bar*," and to learn pointedly and definitively whether this would

admit of his Lordship's counsel conducting or participating in the examination of the witnesses. Mr. Robinson replied, that such a proceeding would be inconsistent with the established practice of Upper Canada; and that he considered it as the peculiar and exclusive duty of the law officers of the Crown to examine the witnesses in all criminal prosecutions*. By the answer of the Attorney-General, combined with that which had been previously received from the President Administering of the Government, Lord Selkirk considered his interference in the trials restricted to communications to the Crown officers respecting the evidence which had been given before him as a magistrate, or which he had collected from other sources. This was done in the most ample and unreserved manner.

With what discretion the Crown officers of Upper Canada availed themselves of the evidence submitted to them, may be collected from the following pages: but the intelligent reader will hardly need that perusal to be satisfied, that under all the circumstances already stated, an acquittal cannot be considered as affording any very strong presumption of innocence.

These verdicts of acquittal are placed on a very

* The Attorney and Solicitor-General of Lower Canada had previously debarred Lord Selkirk's counsel from interfering in examining the witnesses on the prosecution of M^r Lellan for the murder of Owen Keveny, who, when on his way to join Lord Selkirk's colony, was seized on a frivolous pretence, by orders from a partner, and afterwards murdered in cold blood by a clerk of the North-West Company; and the authority, which the Crown officers thought proper to assume on this occasion, had been expressly sanctioned by Sir J. Sherbrooke, the Governor of Lower Canada, in a letter to Lord Selkirk.

equivocal ground by a further circumstance, the diminution and perversion of the evidence occasioned by delay.

In the month of March, 1817, at the criminal term of the Court of King's Bench for Montreal, indictments were preferred (under the Act 43rd Geo. III. c. 138, commonly called the Canada Jurisdiction Act), and found by the Grand Jury against certain partners, clerks and servants of the North-West Company for robbery, arson, and maliciously shooting at peaceable subjects of his Majesty, *viz.* the settlers at Red River. At the ensuing term of the same Court, in September, the witnesses for the prosecution had been collected by his Lordship's agents with great difficulty and expense; several of the culprits then in custody, might have been brought immediately to trial; and the counsel employed by Lord Selkirk entertained no doubt that they would have been allowed to conduct the proceedings. But the Attorney-General unexpectedly and without any previous notice interposed, would not suffer the trials to go on, and announced that it was the intention of the Governor-in-Chief to transfer these cases to Upper Canada for trial. Lord Selkirk being at this time at Red River, his counsel in his name soon after addressed a letter to the Governor-in-Chief, remonstrating against the proposed transfer of jurisdiction being carried into effect, merely on the *ex-parte* statements of the accused by whom it was solicited, without giving the prosecutor an opportunity of being heard. He observed, that " the power given " (by the Act of the 43rd of the King, c. 138,) to the " Governor of Lower Canada to divest the Courts of " that province of jurisdiction, and to transfer it to

“ the Court of Upper Canada, was evidently a very
“ high power and one of a judicial nature, requiring
“ for its exercise a due examination of the grounds
“ on which such transfer of jurisdiction was applied
“ for, with an opportunity to the parties, to be
“ affected by such a measure, to be heard respecting
“ it before it was finally adopted.” He likewise
pointed out, that the circumstances of these prosecutions differed widely from ordinary cases; “ That
“ the crimes involved in these prosecutions had
“ been committed at an immense distance from the
“ seat of public authority; at places where the
“ power of government had not been exercised or
“ felt; where no aid was to be expected from
“ public officers; and where the predominating influence of a powerful association of individuals,
“ interested in screening the guilty from punishment,
“ had necessarily created extreme difficulty in making
“ any progress towards the bringing of criminals to
“ justice.” And he insisted that Lord Selkirk, at
whose expense the witnesses for the prosecution were
collected and maintained, had an unquestionable right
to be made acquainted with the grounds on which
the transfer of jurisdiction had been solicited, and to
be heard against such a measure before its final
adoption. To this letter an answer was returned
by the secretary of the Governor-in-Chief, that the
transfer in question was already “ complete and in
“ execution;” that the Governor-in-Chief did not
think it necessary to enter into an examination of the
arguments submitted against it by Lord Selkirk’s
counsel, “ as the discretion given him by the Act
“ had already been used, and the measure could only
“ then be considered in the light of an executed

“determination; nor (in whatever way Lord Selkirk’s interests might be affected by that determination) could his Excellency consider any other than the Crown and its officers as the prosecutors in a proceeding of that nature.”

During the interval occasioned by this transfer of the trials to Upper Canada, several material witnesses for the prosecutions were under the necessity of quitting Canada, on account of other urgent avocations; and among those who were not under such necessity, several were induced, by the offer of pecuniary advantages, to withdraw into the Indian countries, or to other parts where they were out of reach.

There is, perhaps, another ground for considering these verdicts as an incomplete testimony of innocence. They were returned by persons who resided near two thousand miles from the scene of the offences, and from the neighbourhood of the prisoners and the witnesses. This disunion of locality and jurisdiction trenches upon the fundamental principles of English law; and the mode of trial it prescribes is not in substance a trial by jury.

If it be admitted, for the purpose of the argument, that the innocence of the prisoners has been established beyond all controversy by their acquittal, still it is impossible to form a correct judgment from that circumstance of the transactions that have taken place on the Red River.

A few persons, indeed, have been brought to trial, but these persons are a small and very insignificant portion of those partners and dependants of the North-West Company, against whom bills of indictment have been found by a Grand Jury, for their participation in the affair of the 19th of June. The reader’s

attention is requested to those parts of the Reports, which relates to the proceedings on the Sealed Instruments, that have been described as transferring the trials to Upper Canada. It will there be then seen, that the Government of Lower Canada considers these instruments as sufficiently formal, if they contain a description of the person whose trial is to be transferred: whereas the Courts of Upper Canada hold that they are invalid, without a specification of the offence. The consequence has been that several persons, against whom bills of indictment had been found, for crimes of the most heinous character connected with the destruction of Lord Selkirk's Settlement, and whose trials had been transmitted to Upper Canada, were there discharged on account of this alleged defect in the instruments of transmission.

Notwithstanding this failure of justice, a fair view of the question between the Earl of Selkirk and the North-West Company, might not have been withheld from the public, if the persons who had been notoriously the ringleaders in the attacks against Lord Selkirk's Settlement, had not been altogether screened even from the forms of judicial inquiry. Their fate was not left to be determined by contradictory interpretations of the ambiguities of Canadian law; their escape was insured by a course of proceedings calculated to fill the mind with astonishment and indignation. A short time after the Government had communicated their determination to transfer the proceedings to Upper Canada, an application was made on the part of the North-West Company to the Chief-Justice of Montreal, to admit to bail ten or twelve persons who were in custody under charges of murder, robbery, arson, and other capital crimes connected

with the destruction of Lord Selkirk's Settlement, and against several of whom bills of indictment had been actually found by the Grand Jury. The Attorney-General of Lower Canada did not attend in person, but deputed Mr. Pyke, another of the Crown officers, to act in his place : that gentleman consented to admit the greater part of these prisoners to bail. Lord Selkirk's counsel attempted to remonstrate against admitting to bail persons who were charged with offences of so aggravated a nature, but was interrupted by the Chief-Justice, who declared that the Court could not recognize any private prosecutor, and that, as the Crown had consented to admit these prisoners to bail, no other party had a right to object. Their liberation was therefore ordered as a matter of course. The persons so liberated, with hardly an exception, made their escape into the Indian countries ; and among them were several of those against whom there was the clearest evidence of crimes of the deepest dye. When the greatest part of these criminals were let loose in the month of January 1818, an exception was made of a very few who were under indictment for murder, in a case where a reward had been offered for their apprehension by proclamation of the Governor-in-Chief of Canada. Mr. Pyke, the Advocate-General, who acted on this occasion on behalf of the Crown, as well as Mr. Monk the Chief-Justice of Montreal, considered this as too strong a case to be bailable ; but the Attorney and Solicitor-General, as well as Mr. Sewell the Chief-Justice of Lower Canada, appear to have treated this as a groundless scruple, for they soon afterwards actually admitted the same persons to bail at Quebec. The name of one of them, Cuthbert Grant,

occurs frequently in the following pages ; and the reader who attends to the evidence that was given at York, respecting his conduct in the scenes that occurred at Red River, will not be surprised that he also should have made his escape into the Indian country. He was admitted to bail when under indictment for the murder of Owen Keveny, on account of which the Government of Quebec had offered a reward for his apprehension, and also for the murder of Governor Semple and his followers at Red River, in which he was notoriously the leader and principal actor : and he was, at the same time, under indictment for five other capital felonies.

By these and some other proceedings, no less extraordinary, the escape of the most notorious of the criminals, under the protection of the North-West Company, was secured ; and when the order was at length given, for removing to Upper Canada the prisoners whose cases had been referred to that province for trial, none remained in custody except Paul Brown and François Firmin Boucher, whose trial for the murder of Governor Semple will be found in the following pages. These men had assisted in this crime and several others, in which Cuthbert Grant was the leading actor ; but they were among his subordinate agents, scarcely distinguished in any degree from the common mass of the North-West Company's servants who were employed in the massacre on that occasion. It was not, therefore, to be expected that evidence could be obtained with respect to their conduct, as complete and pointed as with respect to culprits of greater note. To some persons it appeared a matter of surprise, that when all the other servants of the

North-West Company had been liberated on bail, these two only should have been left in prison; that when the leaders and principal actors had been enlarged, subordinate assistants and accomplices should be detained for trial; that when culprits, who were under five or six capital indictments, were admitted to bail, the same indulgence should not have been extended to men who were indicted only for one or two felonies. To whatever cause this is to be imputed, it was at least singularly fortunate for the credit of the North-West Company, that, among the many indictments found against persons under their protection, some trials did take place; and that through the unprecedented use which was made in Canada of the power of admitting prisoners to bail, the North-West Company enjoyed the advantage of going to trial on those cases only in which they might think that they had the best chance of success.

It is necessary, in this place, to mention a few occurrences relative to the last trial reported in this volume, the trial of Cooper and Bennerman. In September 1817, when the intention of transferring the trials was first announced by the Attorney-General of Lower Canada, some prisoners were in custody at Montreal, charged, under four different indictments, with capital crimes arising out of the *first* destruction of the Settlement at Red River, which was effected in 1815, *viz.* one for robbery, one for arson, and two for maliciously shooting at the settlers. Witnesses were on the spot ready to support all these indictments, and the whole of these crimes might then have been brought fairly to trial; but in consequence of the transfers, none of these cases were brought

forward for trial, till after the lapse of more than twelve months, and in this interval the whole of the culprits had been set at liberty. The principal actor in these crimes, one George Campbell (whose name occurs in the evidence upon the trial of Cooper and Bennerman at York,) was enlarged by Mr. Reid and Mr. Ogden, two Judges of the Court of King's Bench at Montreal, who by their own public avowal from the Bench, are so closely connected with the North-West Company, that they could not conscientiously preside at any trial involving the interests of that association. Campbell immediately made his escape into the United States, and thus obtained an effectual shelter from punishment*.

* The mode, in which the escape of Campbell was effected, deserves to be particularly noticed. "About the time when it was determined that Campbell and the other prisoners should be removed from the gaol in Montreal, and sent to Upper Canada, it was discovered that Campbell was no where to be found. Upon inquiry it appeared that Dr. Selby, a physician at Montreal, had visited Campbell in prison about a week before, and stated that the prisoner was in a high fever and dysentery, and that his life was in imminent danger. The regular medical attendant of the prison was never consulted on the subject, nor did he know that the prisoner had been ill. Upon the report of Dr. Selby, however, Mr. Reid and Mr. Ogden (the two puisne Judges, who had not long before, declared in open Court, that they would not officiate in any case in which their connections with the North-West Company were interested), repaired to the prison, and signed a warrant in order to discharge the gaoler for Campbell's liberation. The sick prisoner was accordingly carried out to the hospital in proper form, wrapped up in a blanket. No directions were given to have him more closely watched than any of the common hospital patients. Within forty-eight hours of the time of his removal, he asked permission of his sick nurse to go

Bennerman and Cooper, two of the inferior actors in one of the crimes for which Campbell was indicted, were induced to make their appearance at York, and take their chance of a trial, grounding their defence upon a plea which could not have applied to Campbell or any of the principal contrivers of the outrage in question. The other three indictments which, but for the transfers, would have been tried at Montreal, in September 1817, and in which several partners and clerks of the North-West Company were included along with Campbell, could not be brought to the trial at York, in consequence of the liberation and escape of the prisoners. The offence for which Cooper and Bennerman were tried, was in fact the least aggravated of the crimes for which indictments had been found relative to the first destruction of the Settlement: yet this was the only one of these offences upon which any evidence at all was allowed to be produced.

The reader will not confine his attention to this narrow investigation of those conclusions from the result of the trials into which it has been attempted

and see his wife and children. She forbade him to go out, merely on account of the badness of the weather; the dying culprit, however, took an opportunity of walking out unobserved, and, as might be expected, made his escape. He is said to be now resident near Detroit, within the territories of the United States. After Campbell's escape, a writ of Habeas Corpus bearing date before his discharge, and signed by the Chief-Justice, was presented to the gaoler with a request, that he would give up the order of discharge which had been signed by the Judges Reid and Ogden, and antedate his own return to the writ of Habeas Corpus; to this the gaoler refused to accede."

to mislead the public. He will discover in the evidence, imperfectly as it has been brought forward, a state of society, of which no British colony has hitherto afforded a parallel:—Private vengeance arrogating the functions of public law;—Murder justified in a British Court of Judicature, on the plea of exasperation, commencing years before the sanguinary act;—The spirit of monopoly raging in all the terrors of power, in all the force of organization, in all the insolence of impunity*. The reader will reflect on the

* The following occurrences did not happen in a barbarous age, nor did they result from the rancorous animosity of savage tribes. They took place in a province of our own; and the perpetrators now walk abroad without the apprehension of punishment.

“ On my arrival at the fort, the scene of distress I there witnessed was the most painful that can be imagined. The women and children, and relatives of the slain in the horrors of despair, were lamenting the dead, and trembling for their own safety. I must here observe, that when I left the Frog Plain, it was late at night, and that Grant accompanied me, as my protector, almost to the spot on which I had seen my dearest friends fall. The shade of night hid from my view what the dawn of the following day too clearly exposed, their mangled and disfigured bodies bearing the marks of daggers, knives, and axes, by which many had been dispatched after being wounded by fire-arms from a distance; and most of the bodies were stripped of their clothing.”

“ After having gone three times to and from the Frog Plain, Mr. Macdonell and the half-breed chiefs came to an agreement in substance as before related. An inventory of the property being taken, the whole was then delivered up to Cuthbert Grant for the use of the North-West Company, each sheet of the inventory was signed by him, as acting for the North-West Company.

“ On the 22nd the settlers were much alarmed by a report that the half-breeds intended to offer violence to the women of the

evils that may flow from the administration of justice in Canada, where the prosecution of every public wrong depends entirely on the disposition, the abilities, and the leisure of the Crown officers; a rule which is inflexible, even where private connections might imperceptibly warp their judgments, or where the circumstances of the case, by their own avowal, preclude them from obtaining competent information. The impolicy of that law will be discerned, which enabled a Governor, whose situation is held at the beck of the Crown, to suspend the ordinary jurisdiction of crimes*, to divest the Trial by Jury of an essential characteristic, to create a dangerous delay,

Settlement, in consequence of which, at their request, I waited on Grant and Fraser, to claim their protection. They answered that the intention of the half-breeds only related to the wife of Michael Heden, and promised me that either they themselves would stay at the fort, or send some persons, in whom we could trust.

"The first time I returned from the fort to the Frog Plain, I was accompanied part of the way by the Indian Chiefs, who were going with a cart to collect the bodies of the dead, some of which they brought home, and buried in a corner of my garden. Had Governor Semple really been, (as they always called him,) their father, and his friends who had fallen, their brothers, the Indians could not have expressed greater sorrow than they did on this occasion.

"On the 23rd we were ready to embark, when Grant came to us, and said, he could not allow us to proceed, as Mr. Alexander Macdonell, of the North-West Company, had sent an order for our detention, until his arrival. This was dreadful news: we were without arms, standing upon the beach, surrounded by the murderers of our friends, and in momentary fear of our wives and daughters being violated."—*Mr. Pritchard's Narrative.*

* A statute has lately been enacted in Upper Canada, which carries this infraction upon the common Law of England, to a

and entail an intolerable expense, whilst every remonstrance is rejected without a hearing. The ambiguities of that law will be deprecated, which has given rise to contradictory interpretations proceeding from independent tribunals; and that discretion will be scrutinized which has allowed to such ambiguities, the operation of discharging indicted prisoners without bail. The degree of irregularity observed in the legal proceedings of Courts of Justice; the extraordinary doctrines promulgated from the Bench; the authority assumed by individual Judges, of admitting to bail, persons against whom bills of indictment have been found by a Grand Jury, for the most atrocious crimes, where, from the secret nature of that investigation, the evidence cannot become the subject of revision; all contribute to lead the mind to one conclusion,—the necessity of an interference on the part of the Legislature, and of the Executive Power of this country.

If this interference be withheld, it will not be inconsistent with the experience of mankind, that persons should be found, who, in the conflict between their allegiance and the natural desire of security, may be induced to embrace the proffered protection of the United States: and her Settlements in North America be lost to England for ever. It is from such interference alone, that the hope can be entertained of individuals continuing to devote their talents, and abilities, in directing the tide of Emigration, as it

greater length. It is to have a retrospective operation, and provides that every species of offence committed in any part of a district, which is not included in any known township or county, may be tried out of that district, and in any district of the province whatsoever.

flows from this country, into channels which may redound to the prosperity of the parent state ;—and of colonizing the inviting regions of British North America, with the scions of a moral, a free, and an enlightened nation.

A few circumstances remain to be explained, in order to enable the reader to judge in what degree the Reports of these Trials may be relied upon.

The first that appears in this volume, that of Colin Robertson and others, for a riot, is the only trial which took place in Lower Canada, relative to the transactions at Red River. It is remarkable, as being the only charge against persons connected with the Settlement, upon which the North-West Company have thought fit to go to trial, though a great many others had been advanced by them, all of which were formally abandoned after a long train of vexatious proceedings, protracted for years.

At the time when this trial was brought on, no person was to be found at Montreal capable of taking down the proceedings in short-hand ; but a professional gentleman of eminence undertook to make notes of the evidence in the common mode of writing. The deliberation with which the witnesses were examined, admitted of this being done with a near approach to accuracy, and after the trial was over, an opportunity was obtained of comparing these notes with those which had been taken by one of the Judges.

The trials of Brown and Boucher, as principals, and that of Siveright and others as accessaries to the murder of Governor Semple at Red River in 1816,

as also the trial of Cooper and Bennerman for a robbery committed there in 1815, are given from the report of Mr. W. S. Simpson, who was employed to take down the whole proceedings in short-hand. Mr. Simpson's proficiency as a short-hand writer is certainly not very great: but no other person could be found in Canada possessed of any degree of practice in that line. He has attested his Report by an affidavit, in which he states, that "he did take down
 " in short-hand, to the best of his skill and ability,
 " all the proceedings in the Court at York on certain
 " prosecutions, &c. &c. of which he furnishes transcripts which contain a correct narrative of all the
 " proceedings, &c. &c. &c. in the manner in which
 " they occurred, and without addition, omission,
 " alteration, or misrepresentation, as the deponent
 " doth verily, and in his conscience believe."

The cautious manner in which Mr. Simpson here expresses himself, shews that he entertained a just sense of his own inability to give a complete and perfect Report: but one of the methods which he took to supply his deficiencies is to be regretted, *viz.* that of communicating the rough draft of his Report to the parties who spoke or were examined, so that they might assist him to correct it. He offered such a communication to some of the witnesses for the prosecution, but they considered it as inconsistent with propriety to accept it: there is reason, however, to believe that some persons, of higher station, did not think it unbecoming to accept the offer.

In the following pages, two or three instances are pointed out, in which Mr. Simpson seems to have entirely misapprehended the meaning of the witnesses. In these places the Report is corrected upon the testimony

of a gentleman who took notes of the most important proceedings; but the statement of the short-hand writer is subjoined in a note, so that the reader will be in possession of the different versions. With the same view a comparison has been made between Mr. Simpson's manuscript and a printed edition of these trials lately published for the North-West Company, which professes to be copied literally from his Report. The variations observed on this comparison (some of which are remarkable enough) are distinguished by printing in italics the words of the manuscript which have been omitted, and, in the same character between brackets, the words which have been substituted in the North-West Company's publication. In some places words of the manuscript, which have been entirely omitted in that publication, are here printed in italics; and in other places words introduced into it, but not contained in the manuscript, are here printed in italics and between brackets.

In that publication, as well as in Mr. Simpson's manuscript, the speeches of the counsel, judges, &c. are given at full length. In this edition it has been thought sufficient to give only the charges of the Judges and a few of the most important and remarkable speeches of the counsel *verbatim*, with an abstract of the substance of the rest. By this means the volume is disencumbered of a load of irrelevant matter, which could serve no purpose but to divert the attention of the reader from the evidence. The full detail of these speeches may indeed afford a curious illustration of the degree in which the courts of law in Upper Canada tolerate the most irrelevant arguments, and the most improper language, on the part of counsel at their bar: but those

who have the curiosity to examine the matter in this view, can easily procure the edition published for the North-West Company*.

Though Mr. Simpson's imperfect attainments as a short-hand writer, must necessarily render his Reports much inferior to those which might have been obtained if the trials had taken place in England, yet it would be too much to reject them as altogether unworthy of attention. Notwithstanding several mistakes and omissions they convey a pretty fair idea of the evidence which was produced: and it deserves to be remarked, that in the publication above-mentioned the agents of the North-West Company refer to the evidence which they have published on Mr. Simpson's authority, as affording a complete proof of their innocence. It is therefore clear, that (whatever errors or omissions the Report may contain,) they are not such as to excite any dissatisfaction in the North-West Company, and as that association have themselves brought forward this Report as a triumphant vindication of their conduct, it cannot be unjust to judge them upon the evidence which it contains.

Among the trials which took place at York, there is one, that of Paul Brown for the robbery of Michael Heden, two days after the massacre at Red River, of which no account is given in the publication of the North-West Company, except that the Jury, *without hesitation*, returned a verdict of acquittal. The fact, however, is, as stated in Mr. Simpson's manuscript under oath, that they deliberated two hours before

* Sold at Egerton's, and others.

giving their verdict. Mr. Simpson was present taking notes during this trial as well as the others; but though he gave Lord Selkirk's agents the most solemn assurances of having furnished them with a complete statement of all that had taken place, yet by some unaccountable neglect, no Report whatever of the evidence produced on this trial was included: nor have they yet been able to obtain one from him. That omission has been supplied by a gentleman who was present during the whole trial, taking notes of the proceedings, from which he has been enabled to make out a distinct account of the substance of the evidence that was produced. This trial will be found to deserve attention, as affording a further illustration of the state of the administration of justice in Canada.

The following Explanation of some Terms as they are used in these Trials, may be serviceable to European readers.

Les Anglois, or the English—Persons belonging to the Hudson's Bay Company, or to the Colony on Red River, whether they be natives of Europe or America.

Bateau—A boat, or barge.

Bois-Brûlés, Brûlés, Métifs, or Half-Breeds—Persons descended from Indian women by white men, and in these trials applied chiefly to those employed by the North-West Company.

Bourgeois—applied by the Canadians to the Masters whom they serve, whether partners or clerks of the North-West Company.

Brûlés—see *Bois-Brûlés*.

Engagé—A servant under contract, below the rank of a clerk or interpreter.

English—see *Anglois*.

Equipement—a quantity of clothing and other necessities, including tobacco, stipulated in their contracts to be annually furnished to the clerks and inferior servants of the North-West Company, in proportion to their stations, as a remuneration for their services, besides their wages.

Forts—dwelling houses in the Indian country, which are usually surrounded with a picket fence.

Les François—The French—Fur Traders from Canada and their people, whether natives of Europe or America.

Free men—White men in the Indian country, not under contracts as hired servants or engagés, nor regular settlers at Lord Selkirk's Colony.

Habillement—A suit of clothes. Habillements are sometimes given by the North-West Company to their servants, as a recompence for a special service.

Half-Breeds—see *Bois-Brûlés*.

Hangard—A storehouse for merchandise.

Houmes libres—see *Free men*,

Métifs—see *Bois-Brûlés*.

Pemican, sometimes called *Taureau*—food composed of the flesh of the Buffalo, or of Deer, dried by a slow fire or the sun, pounded and mixed with melted fat, and sometimes with sweet berries. It is usually kept in bags cut out of the skins of animals, and containing each about 80 or 90lbs.

Piece—A package weighing about 90lbs. Goods are put up in such packages for the convenience of stowage in canoes, and of being carried over carrying places, called *Portages*.

Portages—Places in the Indian countries, where, on account of rapids or other obstructions, the goods, and sometimes the canoes, are carried on men's shoulders.

Prairie—Parts of the Country free from woods, and not cultivated.

Snow-Shoes—Light wooden frames about three or four feet long, and twelve or fifteen inches wide, shaped something like a paper kite, on which is stretched a lacing or net work of slender thongs made of the skins of animals. Being fastened to the feet they are used for walking on the snow, and prevent sinking in it when deep.

Taureau—see *Pemican*.

Trains—Sledges made of a thin board, ten or twelve inches wide, and eight or ten feet long, and bent up at one end, by which they are dragged on the snow or ice.

Voyageurs—Traders or their servants from Canada, accustomed to travel in the Indian countries.

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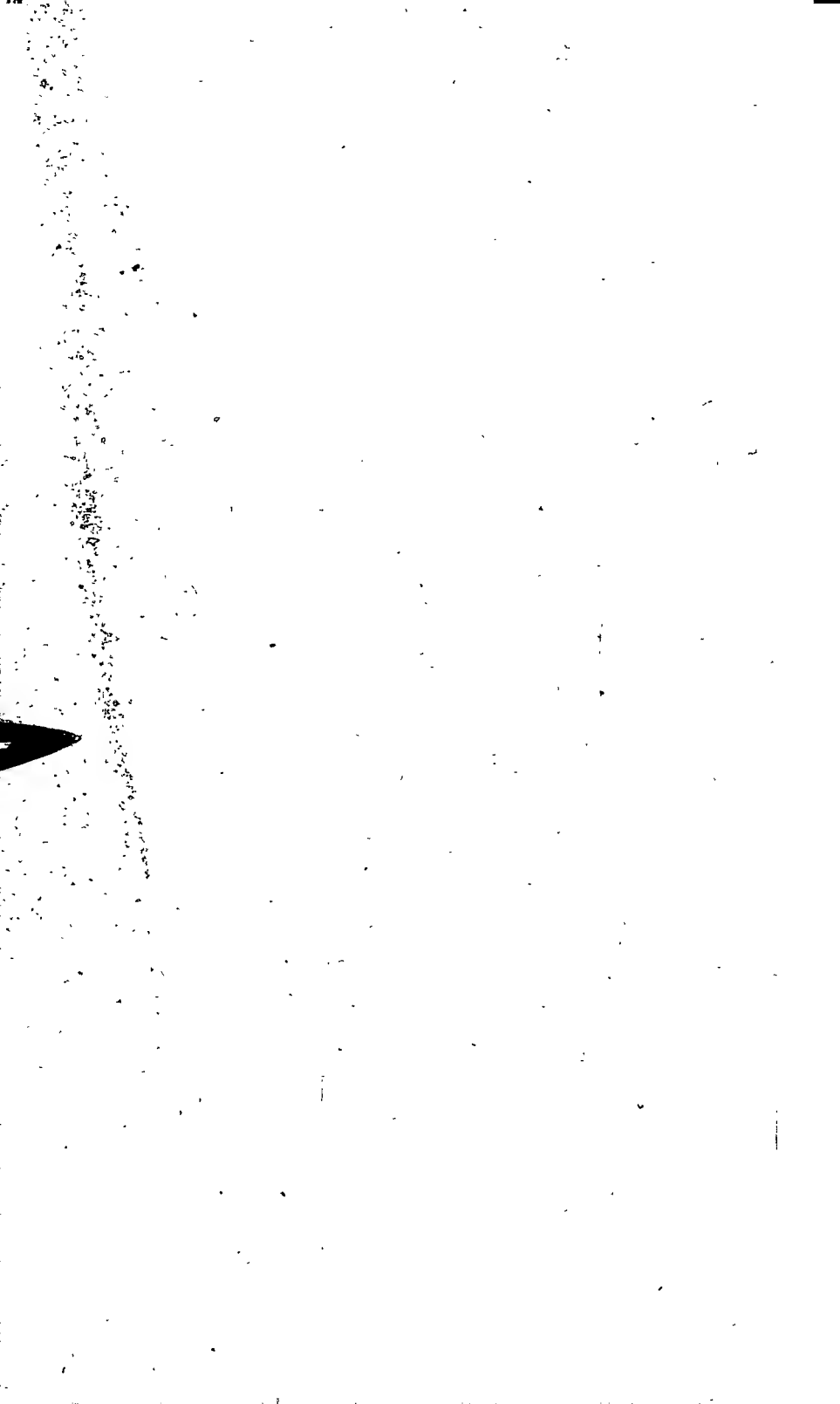
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TRIAL

OF

**COLIN ROBERTSON, MICHAEL HEDEN,
JOHN BOURKE, LOUIS NOLIN, AND
MARTIN JORDAN, FOR A RIOT.**



*At a Court of Oyer and Terminer, held at
Montreal, in May 1818 ;*

PRESENT

THE HON. JAMES MONK, Chief-Justice of the District
of Montreal,

THE HON. MR. JUSTICE BOWEN.

FRIDAY, the 15th of MAY.

THE TRIAL OF

COLIN ROBERTSON,

MICHAEL HEDEN,

and MARTIN JORDAN.

JOHN BOURKE,

LOUIS NOLIN,

The Offence charged against the prisoners was, the riotously destroying certain premises composing a fort of the North-West Company.—The circumstance took place in the spring of 1816.

(Messieurs Roderick M^cKenzie, François Laroque, and Pierre de Rocheblave, were produced to shew that the place where the offence was committed, was within the jurisdiction of the Court.)

JEAN BAPTISTE ROI, *sworn.*

Jean Baptiste Roi. I came down from Red River last fall, and am not in the service of the North-West, or Hudson's Bay Company. I have been forty-four years in the North-West, and often at Red River, during which time I have been but six winters in Lower Canada. I know the Forks of Red River and a fort built there twelve years before its destruction, by a man of the name of Wills: he was a (bourgeois) partner of the North-West Company at the time the said fort was so built. It was a wooden picketing, made of oak trees split in two, which formed its enclosure. Within the said enclosure were

built the house of the partner, two houses for the men, a store, two hangards or stores, a blacksmith's shop, and a stable: there was also an ice-house, with a watch-house (*guerite*) over it: these houses were good log houses, large and inhabited. In the house of the partner were his clerks and interpreters, and in the other houses his engagés (servants), to the number of eight or ten men: each of the houses could have contained twenty men. The houses were thus occupied for the space of twelve years, until about two years ago. The river is about seventy-five fathoms broad. I lived on one side of the river, and the fort was on the other. The English* destroyed the fort. Whenever I opened my door I saw them working to destroy the fort, from the time that they began to destroy it. I saw Colin Robertson there in the beginning: I know Michael Heden from having seen him at Red River; I do not know that Michael Heden was there when the fort was destroyed. I saw Mr. Bourke at Red River, but do not know that he was present when the fort was destroyed. I do not see well and could not distinguish, from the place where I was, the faces of the persons who were busy destroying the fort. I did not see Nolin there when the fort was destroyed: Nolin is a clerk, and clerks do not work as other men do. I saw Nolin go and come several times while they were destroying the houses, but never saw him at work. The timber of the fort, after it was destroyed, was brought to the English fort which was lower down. The English took the pickets of the North-West fort, made them into a raft, and sent them down the river to their own fort: They did the same thing with the wood of the houses; every thing was pulled down except the ice-house: what remained of the buildings was burnt. I cannot say how many persons were busy destroying the houses and fort: I could not well count them, because I could not see them distinctly, but there were more than three persons busy:

* By the canoe-men from Canada the people of the Hudson's Bay Company are always called 'Les Anglois,' 'the English.'

perhaps a dozen or more. They were several days about it, more than one. There were shouts of joy while they were destroying it. The materials of Gibraltar, the fort which was destroyed, were used in strengthening Fort Douglas, the fort belonging to the English. They began to build a fort and houses with the materials, but went away before they were finished, and the gentlemen of the North-West Company finished them. Mr. Cameron and his men were in the North-West fort when Colin Robertson and his men took possession of it.

Attorney-General. Who lived in the fort when Colin Robertson took possession of it?

The Defendant's counsel here objected to the relevancy of the evidence gone into on the part of the Crown. The charge in the indictment was for a riot and pulling down a fort in the month of June, not for forcibly taking possession of it. The evidence now adduced was calculated to prove the latter offence supposed to have been committed three months previously; and was of course inadmissible.

The Attorney-General maintained that, notwithstanding the interval of time, these different overt acts constituted one offence, one continued riot, that it would be proved that the defendants had riotously entered the fort, and riotously kept possession till they demolished it.

The Court over-ruled the objection, and permitted the Attorney-General to proceed.

Jean Baptiste Roi. I was present in the month of March, two years ago, when possession of the fort was taken; I believe it was three years ago last March: I did not see the persons who took possession of it for eight minutes after possession of the fort was taken: Colin Robertson and others came into the fort: I only saw Colin Robertson and Bourke; they had no weapons. I did not see Nolin. I was on a visit at the fort when it was taken, one of my children was with me. There were only five old men in the fort, of whom three were sick; the rest of the men had gone to procure provisions: I returned with my child to my own house, and next day I went back to the fort; I then saw Mr. Robertson and Bourke; it was two

or three days after that I saw Nolin. Cameron was there. Next morning I saw the fort in possession of Mr. Robertson. I saw Jordan and Robertson there: I was informed that the partner Cameron was shut up in his room: there was a centinel at the door of the house where Cameron was. They remained in possession of the fort till it was destroyed. There was a centinel at the gate of the fort whenever I went thither. Possession of the fort was taken in March 1816, and the destruction of it took place about the opening of the navigation: the navigation generally opens about the beginning of April.

Cross-examined.

For twelve years past I have cultivated a piece of ground of my own. Before that I was in the service of the North West Company. It was Mr. Coltman, and not the gentlemen of the North-West Company, who ordered me to come to Montreal. I used to sell the produce of my ground either to the gentlemen of the North-West Company, or of the Hudson's Bay Company. I have no knowledge of a fort of the English having been taken the year before, but I saw their houses burned: I don't know by whom. I don't know whether the persons who burned them came out of Fort Gibraltar. I know that some houses, belonging to the English, were burnt down in June of the preceding year, but do not know by whom. When the fort was taken, I saw only two persons, Colin Robertson and Bourke, in Mr. Cameron's room: I was able to distinguish them, through the window, as they passed and re-passed between the candle and me: they were quiet, and might have come to visit the persons in the fort, for any thing that I know to the contrary. The river was about seventy-five fathoms wide., My house was about forty paces distant from the opposite shore, and the North-West fort fifteen paces from the adjacent shore: one may speak and be heard without difficulty from the one to the other. I was so short-sighted at the time, that I could not distinguish one man's face from another, at the distance between my house and the North-West fort. I saw

Robertson three or four times after the fort was taken, but he went away before it was destroyed. I saw Bourke frequently during the destruction of the fort, but cannot say that he took any part in it, either by working himself, or assisting those who did: he went and came frequently. I have seen him both in the inside of the fort, and without. I did not see Mr. Nolin do any thing, but he was there frequently: my memory is not good, it might be two or three days before the destruction of the fort, that I saw them. I do not know who were the persons, that destroyed the fort.

FRANÇOIS TAUPIER, *sworn.*

François Taupier. I have been at Red River, and remained there three years. Cameron and his people lived in the North-West fort. It was two years last March since possession was taken of that fort, about the hour of eight in the evening, by about fourteen or fifteen men; Colin Robertson, Bourke, and Heden, were of the number. Cameron's party in the fort consisted of seven or eight persons. I did not see Nolin when the fort was taken. The assailants were armed with bayonets, pistols, and swords; the gates of the fort being shut, they came to the wicket and forced the latch: they rushed into Mr. Cameron's house, and took him prisoner. I had reason to be afraid, because Bourke presented a pistol at me, saying he would put me to death if I stirred: a man, who was armed, turned me out of a house by giving me a blow with the butt end of a musket. The persons belonging to the fort were kept prisoners in their houses, for two or three days, centinels having been placed over them: Cameron was kept prisoner in his own room. I was allowed to go to my own house which was at some distance: I did not return to the North-West fort until about the middle of May: the fort was then all destroyed. I have known this fort belonging to the North-West Company for three years: there was in it, one large house where the gentlemen of the Company lodged, also three small houses for the men, a store, a blacksmith's shop, and an ice-house. I saw some of

the materials of the North-West Company's fort (Gibraltar) at the Hudson's Bay fort (Douglas), lower down the river, where Mr. Robertson was, or which belonged to him.

Cross-examined.

I was a year at Red River before the fort was destroyed, and about fifteen years in the service of the North-West Company in that country. There were some houses at a small distance from the fort belonging to Mr. Robertson, or to the gentlemen of the Hudson's Bay Company. I have been told that they had been burnt, but have not seen the ashes: I do not know whether they were burned, or by whom. There were seven or eight men at the fort when taken. I was at the North-West fort when Cameron sent for provisions, before Robertson entered: they were then eight or nine men: only two or three were sent for provisions. When I set off, after I was liberated, I went to the distance of four or five days' walk. I have no knowledge who destroyed the fort.

BASIL BELANGER, sworn.

Basil Belanger. I live at Red River, am a free man*, have been thirteen years there. Fort Gibraltar was built about twelve years ago, by Mr. Wills, a partner of the North-West Company. It contained one house for the partner, two houses for the men, a store, two hangards or stores, a blacksmith's shop, a stable, and an ice-house. I was not in the fort when it was taken: my house was two acres distant from it: my little boy having told me that it was taken, I went thither: I did not see Mr. Robertson there; I saw one M'Lean there, who ordered me to go out of the fort, as I had no business there. M'Lean did not belong to the North-West Company. There were centinels at the fort. I knew the fort was demolished. It was taken in the winter towards the spring. It was destroyed, after it had been about one month in the

* The term 'Homme Libre,' or 'Free Man,' is here used in contradistinction to 'Engagé,' a 'hired Servant.'

possession of the English. I did not see Mr. Robertson at the destruction of it; I saw Heden there, but did not see him working at its demolition. It was the English, or people from Hudson's Bay, who destroyed it. I saw Bourke passing from fort to fort during the demolition of Fort Gibraltar, but did not see him so occupied: I saw Louis Nolin also, but he did not work: I saw Jordan there, but not working. It took six days to demolish the fort. Its materials were conveyed to the water side, rafted, and floated down to Fort Douglas. I do not know who the persons were who took away the materials: there might be thirty men employed in destroying the fort. The persons who took away the materials used them in building houses at Fort Douglas, and repairing it. Mr. Nolin is in the service of the English. The men employed by the North-West Company are called "*Gens du Nord-Ouest*," the others are called "*Les Anglois*," or "*Gens de la Baie d'Urson*," or "*Gens du Petit Nord*."—The men are under the command of the clerks. I was not in the fort during the time that they were destroying it, having been turned out by Mr. McLean.

Cross-examined.

It was from a settler, an Englishman, that I got my house, and not from Mr. Cameron: I was not then in Mr. Cameron's service. I was at Red River in 1815, when the houses of the colonists were burned. I was not at the spot, but I saw the fire. I do not know by whom they were burned. I have no knowledge of Mr. Cameron having given orders to burn the houses of the English. Colin Robertson went away with Mr. Cameron as his prisoner, about a month after the fort was taken. They embarked as soon as the river was open: at that time neither the fort nor the houses were destroyed. Neither Mr. Cameron nor Mr. Robertson returned that summer. I am certain that I saw Martin Jordan coming and going while they were destroying the house. I saw Mr. Nolin pass and re-pass sometimes on horseback, sometimes on foot, sometimes alone, sometimes in company.

JOSEPH JOURDAIN, *sworn*.

Joseph Jourdain. I have been many years in the service of the North-West Company, have wintered two years at Fort Gibraltar. I suppose it belonged to the North-West Company. I never wintered at the fort itself, but was at distant parts, when it was occupied by Cameron. I was at the distance of four or five arpents when the destruction of the fort took place. I neither saw Bourke, Heden, Nolin, Robertson, nor Jordan there at the time.

Cross-examined.

I saw the demolition of the fort. I was near enough to distinguish the persons: there were several persons there. I did not see Mr. Robertson at the destruction of it: Mr. Robertson had gone away the day before. It was by the order of Governor Semple that the demolition took place; it was he who superintended it. Governor Semple was not there when the fort was taken: it was a long time after when he came to Fort Douglas. I am sure that Heden was not there when the fort was demolished, nor were Bourke nor Nolin. I was at the distance of four or five acres from Fort Gibraltar, and would have seen them passing and re-passing had they been there. Martin Jordan had gone away with Mr. Robertson. Jordan after his departure came to Fort Douglas, delivered some letters for Governor Semple (who was then at Fort Douglas), and returned immediately after: he did nothing at all in the demolition. In the year 1815 I was at Fort Gibraltar in the service of the North-West Company, when the colony was first destroyed. It was the same colony which was afterwards re-established under Governor Semple. The colony at the time of its destruction consisted of about two hundred persons: there were several houses in which they lived. In June 1815 the colony was destroyed. It was Cameron and M'Donell who commanded at Fort Gibraltar when the colony was destroyed. Cameron gave himself out as a captain, and had a red coat. The people who destroyed the colony in 1815 sallied forth from Fort Gibraltar, and were under Mr.

Cameron's orders: before the colony was taken and the houses burned, the colony was attacked by an armed force issuing from the North-West fort (Gibraltar) under Cameron. It was a common report amongst the North-West people that the colony was to be attacked in 1816, and that the half-breeds were to assemble for that purpose at Fort Gibraltar. I saw Cameron when he was a prisoner at Fort Gibraltar, having then returned from Pambina. Before that time, at Pambina where Monsieur Bostonois commanded, it was reported that a great number of half-breeds were to assemble at the fort of the North-West Company, and Cameron himself told me so in the month of May, when he was prisoner, and that this was for the purpose of destroying the English colony. It was by way of contempt that the colonists were called English, the word English was used as a term of reproach.

JEAN BAPTISTE MENNIE, *sworn*.

Jean Baptiste Mennie. I lived two years ago at River Pambina. I know the Forks of Red River. I arrived two years ago at the Forks of Red River on the 4th of May. Fort Gibraltar was built twelve years ago: we were employed a whole year building it. In the winter there were twenty men there who were all employed. The fort was built by one Mr. Wills who died there, and was succeeded by Mr. Cameron. There were in the fort one house sixty-four feet long, one of thirty, a kitchen of fifteen feet, another house twenty-eight feet, a store twenty-two feet, and other buildings. I saw the fort this time two years: Mr. Cameron and his people were then living there. When the fort was taken I was at River Pambina. When the fort was destroyed I had returned from the wintering place. I lived on the other side of the river, when it was destroyed by the English: I was there. Michael Heden demolished the fort as well as the others, using an axe and a hammer to pull out the pins. I saw Bourke, at the time of the demolition, give instructions to a man whom he called a lazy fellow for not work-

ing. I saw Louis Nolin there at the destruction, but did not see him work. Martin Jordan was near the fort at the time of its demolition. They were about seven or eight days demolishing the fort. They made rafts of the materials, and brought them down the river to the fort of the Hudson's Bay Company.

Cross-examined.

I was in the North-West two years ago. When I arrived at the fort in May, Mr. Robertson was living quietly there. I went to see Mr. Cameron who was then prisoner. It was customary to winter at Pambina, and come down to the Forks in spring. I have now been twelve years a free man, that is to say, under no engagement. The year before, I remained all summer at the Forks, where there was a colony of English at Fort Douglas, thirty men or more. Cameron commanded the fort of the North-West Company. I have seen the place where the houses of the English were burned. I do not know who burned them. After my arrival I remained for five or six days on the same side of the river as the North-West fort. After that I went to the other side. I arrived the 5th of May, and I believe it was twenty-five days after, that the North-West fort was destroyed. I could see the men across the river, but not so as to distinguish particular persons. Mr. Bourkespoke English. I understood him well enough, but I cannot repeat the words he used. I am sure I saw Nolin at the fort on horseback, while they were pulling down the houses, but he did not meddle. I am sure also that I saw Heden working at the fort, pulling down. I did not remark the particular day. Mr. Robertson was not there when they were pulling down the fort. The people of Hudson's Bay were called "*les Anglois*," and those of the North-West Company "*les Canadiens*." Governor Semple was at Fort Douglas two years ago when I arrived, but I never saw him in the North-West fort, while it was taking down, though I was there several times.

CHARLES TAIT, *sworn*.

Charles Tait. I am a clerk in the company of M'Tavish, M'Gillivray, & Co., and have seen the articles of co-partnership of the North-West Company. The persons named in the indictment do compose the firm of the North-West Company, and were so in 1816. The establishments, houses and buildings in the North-West and Indian territories form part of their stock and property, and belong to them.

Cross-examined.

All the persons whose names are in the indictment were, I believe, partners of the North-West Company in 1816. I know this from having made up the accounts in the books, of those down to the name of Sir Alexander M'Kenzie only; I know some of those subsequently named in the indictment to have been partners in 1816, and I believe they all are. I never heard of any other partners.

SAMUEL WILCOX, *sworn*.

Samuel Wilcox. I am a clerk to the North-West Company, and the names in the indictment from Sir Alexander M'Kenzie's to James Leith's are now and were partners in the North-West Company in 1816. I have seen their original association and signatures. All the persons named in this indictment are also named as co-partners in the books, and were so in 1816, and there were none others in that year: some of them are since dead.

THOMAS THAIN, *sworn*.

Thomas Thain. I know the partners in the North-West Company. The persons named in the indictment were all the partners of the North-West Company in the year 1816.

After the evidence on the part of the prosecution was gone through, the defendants' counsel renewed the objection made in a former stage of the proceedings as to the

irrelevancy of the evidence. He contended that there was no evidence to make it necessary, that the defendants should be put on their defence. They were charged with having on the 1st of June, committed a riot and pulled down houses, &c. If there was any evidence against them it was evidence of a different riot and taking possession of a fort, committed three months previously: a totally distinct offence from that charged in the indictment. The defendants ought not, therefore, to be compelled to proceed on their defence, but were entitled to an immediate acquittal.

The Court over-ruled this ground, and required the defendants to proceed on their defence.

THE DÉFENCE

Was then opened and witnesses called.

MILES MACDONELL, *sworn.*

Miles Macdonell. In 1811 I went to found an establishment, or settlement, at Red River, under the direction of the Earl of Selkirk, and I had a commission as Governor from the Hudson's Bay Company, under the authority of their charter. In 1812, a colony was founded there of about one hundred and twenty persons, servants and settlers, and houses were soon afterwards erected, and ground to a considerable extent put into cultivation. The soil was excellent, the climate was good, and the colony would have rapidly improved and flourished, but for the machinations of its enemies. There was a commercial establishment called Fort Gibraltar near the colony, belonging to the North-West Company; when I arrived it was in the possession of Mr. John Wills. Duncan Cameron succeeded Wills in the autumn of 1814. The hostility of Duncan Cameron to the colony was early manifest.

An objection was made by the Attorney-General to the admissibility of this evidence. The counsel for the defendants contended that it was necessary, in order to shew

quo animo the defendants had acted in the transactions in question. The evidence of prior aggressions, and of the grounds which they had to apprehend a repetition of the same, would prove that they had been actuated solely by the necessity of self-defence. The Court allowed the evidence to proceed, with an injunction not to name the persons, who had been engaged in acts of hostility against the colony, so far as they were unconnected with the prisoners.

Miles Macdonell. In 1814 I heard that plots and machinations were going on in Fort Gibraltar hostile to the colony. The persons of the North-West fort shewed this disposition to the colony, by seducing the settlers and endeavouring to starve them. In winter 1814-15 the buffaloe were driven away from our hunters by the servants of the North-West Company. These machinations were followed by an act of open violence in April 1815, when nine pieces of artillery belonging to the Settlement, were taken by the persons who were in Fort Gibraltar, where I saw them afterwards. Those pieces had been forcibly taken. The next act of hostility was committed by an armed force which issued from the North-West fort, in May following, when they took away the cattle belonging to the colonists; an attack was also made on Fort Douglas, by an armed force, in June 1815; the firing lasted three quarters of an hour. The whole had for its object to drive away the colonists. The colonists were in fact driven away in the latter end of June 1815. After the colonists had been forced away, their houses were burnt. I saw the ruins; but I do not know by whom those houses were destroyed. The whole of the colony was destroyed at the same time. The Indians were particularly friendly, notwithstanding the efforts made to stir them up against the colonists.

Cross-examined.

There was an order issued by me to prevent the colonists and others, except Indians, from hunting the buffaloe on horseback, for the purpose of preventing them from being driven away. It was published and sent to the

North-West fort. It was never put in execution, because it was found to be unpopular, and the motives which induced me to issue it misrepresented. The order was issued at the solicitation of the North-West gentlemen, who recommended it as beneficial to all parties.

In answer to a question from the Court. I have no knowledge that his Majesty ever confirmed my appointment as Governor. I never took any state oaths: they were never tendered to me.

JOHN PRITCHARD, *sworn.*

John Pritchard. I know that in 1812, a colony was established near the Forks of Red River, under the sanction of the Earl of Selkirk. In the spring of 1815 I became a settler at Red River with a view of remaining there. The colony at that place was then in a flourishing state. The nature of the soil and climate were particularly favourable to such an establishment. In establishing myself there, I had reason to promise myself a happy situation. Hostility was evinced towards the Settlement, when I first became a colonist, by the persons inhabiting the North-West fort. There were secret machinations going on for its destruction. These were evident from the circumstances of the people in the North-West fort, seducing the settlers and driving away the cattle, and committing overt acts of hostility by taking away the artillery from Fort Douglas, of which last fact I have no personal knowledge, but I saw it in Fort Gibraltar in possession of the servants of the North-West Company, and one of the pieces was pointed by one of the North-West people against the Government House, the principal residence of the colonists. I have a personal knowledge of four attacks made upon the colonists in the months of May and June, by an armed force which issued from Fort Gibraltar. I cannot say the number of assailants in these attacks: fifty or sixty persons were engaged in one of them. In one of them a Mr. Warren, a clerk of the Settlement, lost his life. The last attack was about the 23d of June. The colonists were threatened with hostility from the Indians, but falsely, because the Indians were

always found friendly to us. These measures of hostility had the effect of driving away the colonists: the North-West declared that such was the effect they desired. After the departure of the colonists, the houses and buildings were burned to the ground. I was one of the colonists who went to Jack River in consequence. Afterwards Colin Robertson arrived from Montreal, with a number of men intended for the trade of the interior, and prevailed on us to return with him to Red River. The colony was re-established in September 1815, and the houses rebuilt. After the re-establishment, Mr. Robertson acted as governor. The return of the colonists was most agreeable to the Indians. Hostility was renewed against the colony by the inhabitants of the North-West fort; menaces and threats were uttered by the half-breeds in the service of the North-West Company at Fort Gibraltar. They declared that they would assemble in large numbers in the spring, and destroy the colony, as they had done the preceding year. No partners of the North-West Company were at Fort Gibraltar when we first arrived. These menaces were renewed after the return of two of the partners of the North-West Company to Fort Gibraltar. I did not see an unengaged man or Indian during the course of the winter, who did not tell me to take care, and that men were collecting in different parts for that purpose; their language generally was '*mefiez-vous bien!*' 'you will be attacked in the spring!' Mr. Robertson was informed of this. The partner of the North-West Company who had the charge of the fort, was the principal person who had been guilty of the aggressions on the colonists the preceding summer. This was the state of affairs when Fort Gibraltar was taken possession of. The half-breeds were to come in the spring for the purpose of destroying the colony. All that I have here stated, occurred previous to the taking of the North-West fort, in 1816; I cannot say, if Mr. Robertson deemed it necessary for the preservation of the colony, to prevent this meeting of the half-breeds, but if I had been there, I should have deemed it necessary for the preservation of the colony, to take possession of Fort

Gibraltar. I was absent at that time, and returned in April 1816. The colony was destroyed in 1816, by persons in the service of the North-West Company, under the command of Cuthbert Grant, and the colonists were again compelled to abandon their settlement. This Grant was one of the half-breeds, and headed the party which in fact did destroy the colony on the 19th of June 1816. Governor Semple had the charge of the colony at the time that Fort Gibraltar was taken, until his death. When we returned from Pambina, Fort Gibraltar was entirely under the orders and control of Governor Semple, together with the persons in it. The persons of the colony were in the habit of going backwards and forwards from the colony to Fort Gibraltar. When we returned from Pambina we heard nothing of an intention to destroy Fort Gibraltar, it was destroyed in order that it might no longer serve as a rendezvous for the half-breeds. The resolution was adopted after our return, by Governor Semple, in consequence of some provisions belonging to the Hudson's Bay Company, which were on their way in boats, in the river Qui Appelle, having been seized about the 10th of May, by persons of the North-West Company, who expressed a determination to come down to attack the colony; this was when the navigation was open, some time in the month of May. After the provisions were taken, a fort belonging to the Hudson's Bay Company, called Brandon House, was destroyed by the same persons. This circumstance, and the report that these persons were coming down, were the reasons stated to me by Governor Semple himself, which induced him to cause the demolition of Fort Gibraltar. As far as I know, that measure originated with Governor Semple, whom I saw going from Fort Douglas with a party of colonists for the purpose of destroying it. He told me when setting out that he was going so to do. At this time, John Bourke was employed with me in making out accounts at Fort Douglas. Mr. Bourke did not accompany Governor Semple, but remained with me more than six days after his departure: he remained so till the 19th of June. Bourke could not have been at the demolition

of the fort during those six days, except at night: he began to write at six o'clock in the morning, and continued so employed until sunset. Nolin was not one of the party who went with Governor Semple. I do not know whether Michael Heden was one of the party or not: I did not see him go. Mr. Robertson was not at Fort Douglas when Governor Semple resolved to destroy Fort Gibraltar. About an hour after Mr. Semple left Fort Douglas to demolish Fort Gibraltar, Mr. Robertson embarked for Hudson's Bay. Governor Semple, before his departure to demolish the latter fort, told me that such was his intention, contrary to the opinion of Mr. Robertson, who thought it should not be destroyed. Martin Jordan went away with Mr. Robertson for Hudson's Bay. Neither Mr. Robertson nor Jordan were present at the demolition of the fort. I most sincerely believe that the destruction of Fort Gibraltar was executed by the party led out by Governor Semple. I was twice in Fort Gibraltar during the spring, before its demolition. Some of Robertson's men may have remained, some were gone away with him; he was under the orders of Governor Semple.

Cross-examined.

When I first went to Fort Gibraltar, Robertson was there. Robertson was not at Fort Douglas when Governor Semple and his party went to Fort Gibraltar. I saw Robertson embark about an hour after. An altercation took place at Fort Gibraltar, between Mr. Robertson and Governor Semple, when the latter went to destroy it; so the latter told us. Robertson said to Semple, "Now, Sir, I am out of the fort," to which Governor Semple replied, "Then stay out." Bourke was employed by me some time previous to the destruction of Fort Gibraltar, and remained with me until the 19th of June. The two forts were on the same side of the river, and distant from each other about one mile, a pleasant walk. It was possible that Bourke might have gone to the fort, and given an order during the demolition, but it was quite improbable. If any man was to swear that Bourke

was there, I could not swear he was not. The half-breeds generally live with the North-West Company; some of them live in the plains and have tents, in which they live, unless when within reach of the North-West houses. A great many of them live in forts; they are born in forts; they gain a livelihood by voyaging in the North-West canoes, and the Hudson's Bay boats. When they made excursions they generally came from the North-West fort: they issued from that fort the preceding spring; it was the general rendezvous. Martin Jordan set out with Mr. Robertson, and came back the same or next day with a note from Mr. Robertson to Governor Semple. I cannot say whether he brought it to Fort Gibraltar, or sent it from Fort Douglas thither. Jordan came to Fort Douglas and told us he had a note for Governor Semple, and went back immediately with an answer. Warren died of a wound of the head: the surgeon could not tell whether it was caused by the bursting of a gun in the Hudson's Bay fort, or by a ball. It was a wall-piece that burst at the Government House. The colonists were then repelling the attack of their assailants, the half-breeds. On the 20th of March, 1816, I was at Pambina (Fort Daer), distant one hundred miles from Fort Douglas. Fort Pambina was not taken. Mr. Alexander Macdonell, Sheriff of the district of Ossiniboia, having heard that three half-breeds, who had committed depredations on the colony, were in Pambina (a North-West fort), went with his constables to take them prisoners, and took them; some ammunition and arms, with which they would have committed further depredations, were seized and carried to Fort Daer. These Brulés had burned the colonists' habitations the year before. Sometime after the taking of the prisoners, Cameron, who commanded at Fort Gibraltar, sent for the provisions, and they were delivered to him. There was no fort at Pambina; it was merely a house. On or about the 18th of April, 1816, I was coming down to Fort Douglas, and saw the house for the last time; it was not destroyed.

Question by a Juror. Q. Do you know what was done with the materials of Fort Gibraltar?

John Pritchard. They were brought down in rafts to Fort Douglas, and employed in repairing it. The timber was set up in picketing and houses.

I wintered in 1815 and 1816 at Red River in Fort Daer, which I think is distant one hundred miles from Fort Douglas. In 1814 I occupied a fort belonging to the North-West Company on River la Sourie. I was then in the service of the North-West Company; it is a trading post, and a dépôt for provisions of that Company. Some pemican, four or five hundred bags, belonging to the North-West Company, were seized by Mr. Spencer, Sheriff of the district of Ossiniboia in June 1814. The persons who took the provisions were armed, five or six; these provisions were in the fort. Two of the pickets of the fort were cut by Mr. Spencer, and his people forcibly entered the fort, and the provisions were taken out.

Re-examined.

Mr. Spencer read a warrant, which he shewed; but the matter was afterwards settled amicably between the North-West Company and Governor Macdonell.

In answer to a question by the Jury. I know Roi, Taupier, Bellanger, Jourdain, and Mennie. I never heard any thing against their characters; Taupier is a perfect honest man, and so is Jourdain; I don't know the others in particular.

PATRICK CORCORAN, sworn.

Patrick Corcoran. I came to the colony of Red River in 1812, and remained till the spring of 1816, in the country of Red River. The colony was begun in 1812; about one hundred persons may have come out with Governor Macdonell, and the colony continued to improve. I thought the climate and soil good. Every one I was acquainted with was well pleased with the colony. During the existence of the colony there was a North-West fort at Red River, called Gibraltar, under the orders of one of the partners of the North-West Company. Acts of

violence and hostility were committed by the persons at the fort on the colonists in the beginning of June 1815. I could see about twenty persons attacking, and believe there were more; they proceeded from the North-West fort, and returned there. They attacked with musquetry and small arms; the attack lasted about an hour. In consequence of such acts of violence, the colonists were obliged to go away, myself amongst the number. After the departure of the colonists, their houses were destroyed. I would not have left the colony but for the fear excited by these attacks. The assailants issued under arms from Fort Gibraltar. I went from the colony across the Lake Winipic, to Jack River, where Mr. Robertson came in July 1815. After his arrival Mr. Robertson proposed to the colonists to return, assuring them of protection. I went to Hudson's Bay to meet some colonists who had arrived from Scotland. On my return to the colony, the colonists had begun to rebuild, and completed the buildings during the winter. The common report and the general belief amongst the free men, during the winter, was, that the colony was to be destroyed again in the spring, and that the people intended for that purpose, were to assemble at Fort Gibraltar. I was at Fort Daer when Fort Gibraltar was taken possession of by Mr. Robertson. I was at the demolition of Fort Gibraltar in the beginning of June 1816. Governor Semple then commanded at Fort Douglas. It was by Governor Semple's order that Fort Gibraltar was destroyed. I was at Fort Douglas when Governor Semple left it for Fort Gibraltar; he took with him about twenty men; I saw who they were; neither Bourke, Heden, Jordan, nor Nolin, were of the number. I was at Fort Gibraltar, when Governor Semple gave orders for its demolition. Governor Semple, without having any conference with any person on the subject, caused it to be destroyed by the twenty persons whom he took with him from Fort Douglas. These twenty persons were those alone who were concerned in the destruction; those who were previously there having taken no part in it. I was

in Fort Gibraltar the whole time of its demolition, it lasted three days. Neither Bourke, Nolin, Heden, nor Martin Jordan had any share in it. Jordan had gone away with Mr. Robertson. It was the twenty persons only who were led by Governor Semple, who executed the whole of it. Governor Semple and these twenty persons lived at Fort Douglas. The same morning, before any thing was done to the fort, Mr. Robertson went away in a boat. The same persons who destroyed the buildings, took away the materials. Governor Semple remained at Fort Gibraltar.

Cross-examined.

I saw the twenty persons go; I had no list of those persons. Three days were consumed in destroying the fort: I remained there all the time. Mr. Robertson occupied the fort when Governor Semple went there, and was in charge there under the orders of Governor Semple. The defendants could not have taken down a single stick of the fort without my knowing it; those who destroyed it began their work generally at nine o'clock in the morning; their number was sometimes twenty, sometimes more, sometimes less. After taking down the pickets, they set to taking down the buildings as fast as they could: I saw Heden either the day before, or the same morning, but he took no part in the work whatsoever, nor could have had any thing to do with it; Bourke had no share in it, nor Nolin. The chief part of those employed in it are now in their graves, from a sort of death well known to the public at large. I was resident in Fort Douglas before that time. If any one swore that any of the defendants took any part in it, I would say it was a lie.

FRANÇOIS ENOS, dit DELORME, sworn.

François Enos, dit Delorme. I was at Fort Douglas when Fort Gibraltar was destroyed in 1816. When Governor Semple left it to destroy Fort Gibraltar I saw the persons who were with him, and I believe it was done by

his orders. Mr. Bourke was not one of them, for he was employed with Mr. Pritchard; nor was Nolin; Heden at the time was working in his blacksmith's shop at Fort Douglas. Martin Jordan had gone with Mr. Robertson. I am certain that Mr. Robertson had been gone for Hudson's Bay before the work of demolition was commenced, the evening before, but I cannot say whether he had departed the same or preceding day; it lasted four days, and it was done by the people the Governor took with him

Cross-examined.

I did not go to Fort Gibraltar during its demolition, and I was employed to trade with the Indians for the Hudson's Bay Company.

AUGUSTIN CADOTTE, *sworn.*

Augustin Cadotte. I know that Fort Gibraltar was demolished in 1816. At that period Governor Semple commanded at Fort Douglas. I was present when he gave orders for the destruction of the former fort. The number of men, whom he took with him for that purpose, was fifteen or twenty; I saw them all; they departed at the hour of ten in the morning. Bourke was not one of them, nor Heden; he was a blacksmith, lived in the same house with me, and was occupied at his forge during the whole of the time employed in the demolition, which was three days. Louis Nolin was not there neither. Mr. Robertson had set out for Hudson's Bay with Martin Jordan. I saw Mr. Bourke every day busy in making up accompts; I also saw Nolin every day, and he was not concerned in the destruction. I was not at Fort Douglas when Fort Gibraltar was taken; I came to the former in May; it was Governor Semple who commanded at the latter, and who continued there till the houses were destroyed. All was quiet and tranquil when I came from River Pambina, where I learned that the half-breeds were to come and destroy the colony, to do what they had done before, massacre and destroy, and in June following the colony was again destroyed. I have been thirty-eight

years at Red River. The colony was a flourishing one and liked by the Indians. I was present when the houses were burned in 1815; the persons who did so, came out of Fort Gibraltar; they were Metifs, in the service of the North-West Company, Cuthbert Grant, and Pangman Bostonnois. They destroyed the colony; they would not allow any colony to be there: I heard this from the Metifs, who were clerks of the North-West Company, and some of them who have had a good education: the Metifs were originally very well disposed for the colony, but afterwards changed their sentiments. If it had not been for the North-West Company, it would have been a most flourishing place by this time. Jean Baptiste Roi is not one of the best characters; I always took Mennie for a very honest man.

Cross-examined.

I am in Lord Selkirk's service. I was in the place, but not on the spot when Fort Gibraltar was demolished. I do not speak English: it was Irish and Scotchmen who went with Governor Semple to demolish the fort. Governor Semple spoke English; nobody could have done it without his permission.

DONALD LIVINGSTON, *sworn.*

~~Donald Livingston.~~ I was present at Fort Douglas, when Fort Gibraltar was destroyed: I know that Governor Semple gave orders to that effect. I was at Fort Gibraltar, when Governor Semple arrived to destroy it; it was in June 1816. The party consisted of about twenty men. I knew them, and know Bourke, Nolin, and Heden, and must have seen them had they been there. Martin Jordan had gone away with Mr. Robertson before any part of the demolition had taken place. I cannot say whether all the twenty men were busy destroying, some of them did, and some did not remain at Fort Gibraltar during its demolition. It occupied about two days, I don't speak positively. I remained there the greater part of the first day, returned to sleep at Fort Douglas, went again the next day, and

returned to sleep at Fort Douglas. I am certain Bourke did not assist in the demolition. I understood him to be busy with Mr. Pritchard; and neither Heden nor Nolin touched the fort. They might have taken two days to demolish the fort. I am not certain of the time. They had nothing to do with it by my knowledge.

Cross-examined.

I was at Fort Gibraltar the greater part of the first day. I went the second day and remained from eight o'clock till sunset; I went there the third day, but staid there only a short time. I saw some of the wood brought down to Fort Douglas, and it was used in fortifying the fort, and building one house.

DONALD M'KAY, sworn.

Donald M'Kay. I was at Red River in 1816, and had been there for three years before. Governor Semple commanded at the destruction of Fort Gibraltar. Both forts were under the orders of Governor Semple. I was present at Fort Gibraltar when he gave orders to demolish it; he had twenty men with him, I saw them. Neither Bourke, Heden, nor Nolin, were of the number. Martin Jordan was gone away with Mr. Robertson. Bourke was making out accounts with Mr. Pritchard, and continued so employed during the demolition. The destruction lasted three days: during that time Heden was working in his shop at Fort Douglas; Nolin was in the same place during the same period. I had occasion during that time to go to Fort Gibraltar every day, saw those who were working, and can swear that neither Bourke, Heden, nor Nolin, had any share in it, and Robertson and Jordan had departed for Hudson's Bay before a stick was taken down.

Cross-examined.

I was at Fort Gibraltar all day, and every day during its destruction; and returned every night to Fort Douglas to sleep. The work occupied three days; I was there all the time, and they began at the gate. The twenty men

were not all employed at the same spot ; none of them could have left the fort without my knowledge.

HUGH M'LEAN, *sworn.*

Hugh M'Lean. I was at Red River in 1816, when Fort Gibraltar was demolished. I lived near Fort Gibraltar, and heard Governor Semple give orders to that effect. I saw the party go out for that purpose, and they amounted to ten or fifteen men ; I saw them all, and neither Bourke, Heden, Nolin, nor Jordan, were amongst the number. Mr. Robertson had previously gone with Jordan. I was not there during the demolition, for I was employed in my house. Heden was employed in the blacksmith's shop. I saw Nolin at Fort Douglas every day.

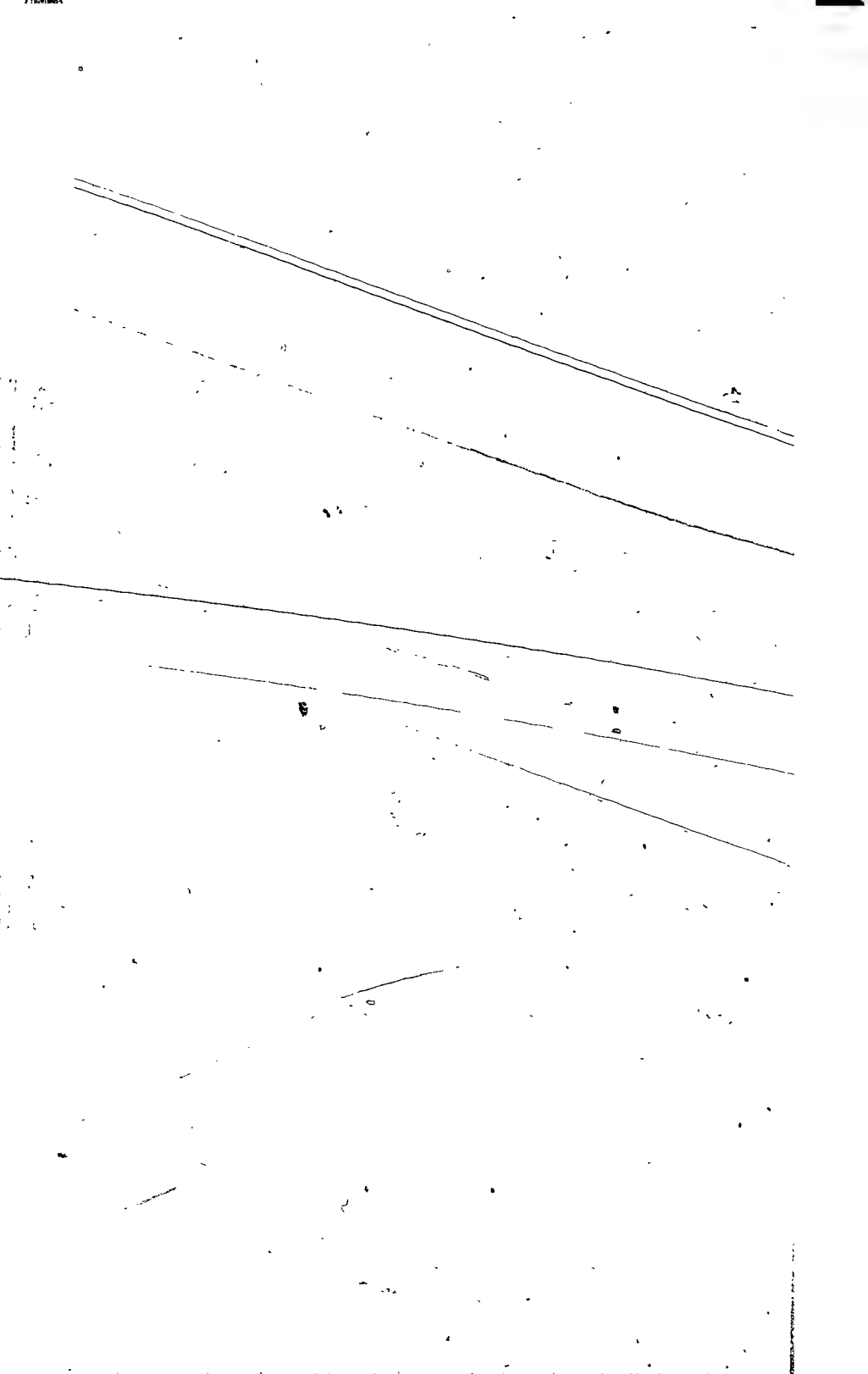
Cross-examined.

I lived in the spring of the year 1816 at the Forks, when Gibraltar was taken ; I was there, at Fort Gibraltar, at the time. I was in the employment of the colony, commanded by Governor Semple. Mr. Colin Robertson took the fort ; it was taken between six and seven o'clock in the evening. I don't recollect the date. I believe I saw John Bourke of the party, he was armed. Mr. Robertson had his sword. Michael Heden was of the party ; I don't recollect if he was armed when he entered.

SUBSTANCE OF THE CHARGE.

THE CHIEF-JUSTICE directed the Jury to bear in their minds, that the indictment did not charge the prisoners with an intent of taking and keeping the fort, but of destroying it. That the Jury would have to acquit the prisoners unless they believed that it was their object to pull down the fort.

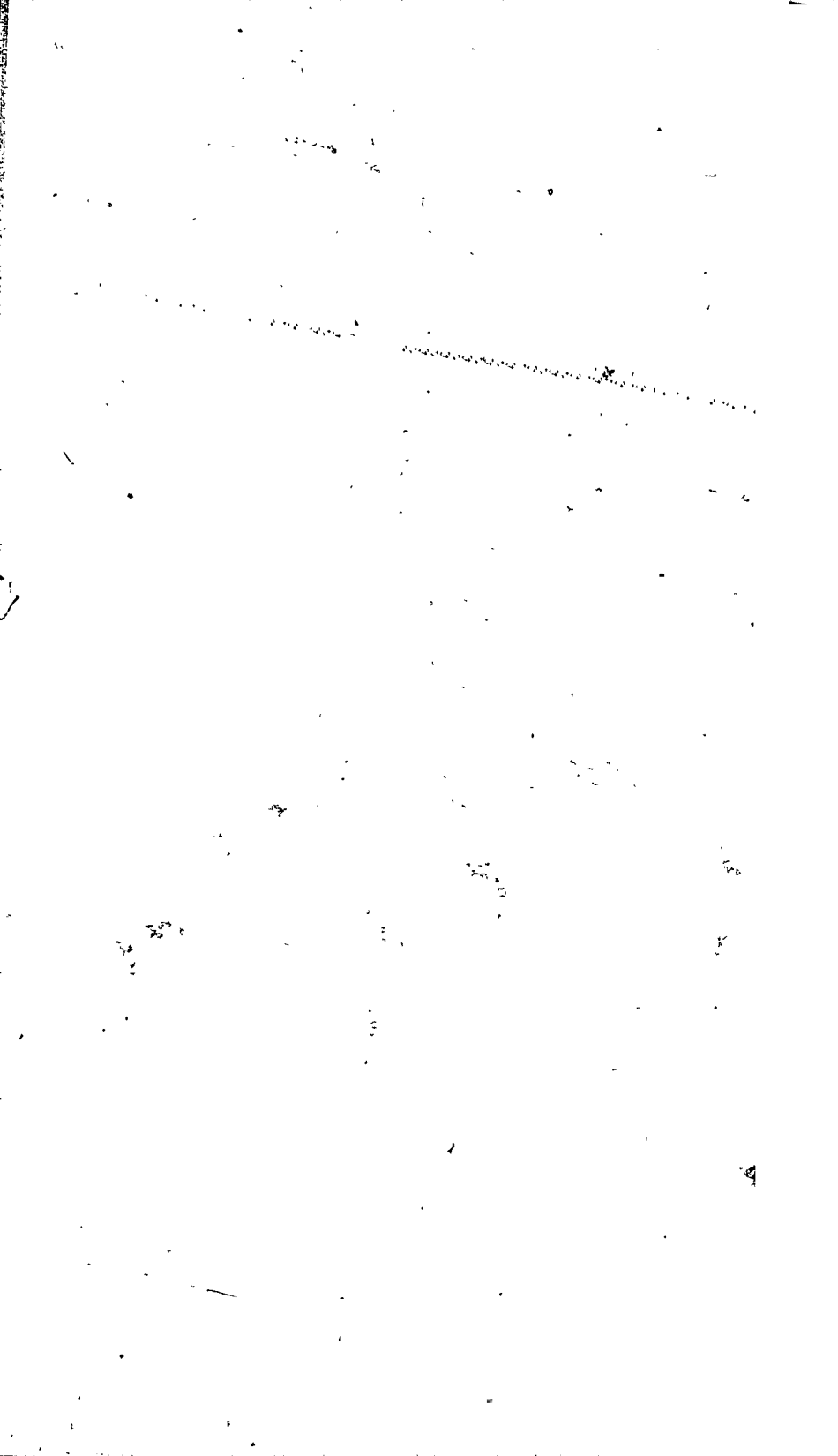
The Jury, after a few minutes consideration, brought in a verdict of NOT GUILTY.



TRIAL

OF

**PAUL BROWN AND FRANCOIS FIRMIN
BOUCHER, FOR THE MURDER OF
ROBERT SEMPLE, Esq.**



*At a Court of Oyer and Terminer, held at
York, in the Home District of Upper Canada,
on Monday, the 19th of October, 1818;*

PRESENT

THE HON. CHIEF-JUSTICE POWELL,
THE HON. MR. JUSTICE CAMPBELL,
THE HON. MR. JUSTICE BOULTON,
THE HON. JAMES BABY, Esq. and } Justices of the Peace.
WILLIAM ALLAN, Esq.

The Court was opened in the usual manner, and the
Chief-Justice delivered his charge to the Grand Jury.

THURSDAY, the 22d of OCTOBER, 1818.

An indictment was found by the Grand Jury, against

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| CUTHBERT GRANT, LOUIS PERRAULT, PAUL BROWN, and FRANÇOIS F. BOUCHER, ALLAN M'DONELL, JOHN SIVERIGHT, SERAPHIM LAMARRE, and PETER PANGMAN, ALEXANDER MACKENZIE, JOHN M'DONALD, SIMON FRAZER, ALLAN M'DONELL, SERAPHIM LAMARRE, HUGH M'GILLIS, JOHN M'LAUGHLIN, WILLIAM SHAW, JOHN SIVERIGHT, and PETER PANGMAN, | { as Principals ; { as Accessories be- fore, and { as Accessories after, the Fact. | } } } | For the murder of Robert Semple, Esq. on the 19th of June, 1816. |
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FRIDAY, the 23d of OCTOBER, 1818.

The Attorney-General moved the Court for process
against such of the persons charged in the bills that were
found by the Grand Jury, as were not in custody.

Mr. Sherwood contended, that those persons who were charged in the indictment as being accessaries, were entitled to continue at large on bail. They had been admitted to bail by the Governor-General of Lower Canada, who had sent them to Upper Canada for trial; they were under recognizances to appear at the Assizes in Upper Canada; and he quoted Chitty on Criminal Law to shew that under these circumstances no process could legally issue against them; but that, supposing they were not under recognizances, a *Capias* must be the first process which should be resorted to, and that could not be sued out against accessaries until after the conviction of the principals.

After a long discussion, the Chief-Justice said that the observations of Mr. Sherwood would not apply to a case where bills had been found against the accessaries by a Grand Jury. That with respect to those at least who were charged as being accessaries before the fact, as their offence was capital, he should not admit of their being bailed. That the offence, and not the offender, had been transmitted from Lower Canada. That he should, however, not insist on committing to custody those who were charged as being accessaries after the fact, provided they offered security which should satisfy the Attorney-General.

The Attorney-General consented to the accessaries after the fact, being admitted to bail, themselves each in the sum of five hundred pounds, and two sufficient sureties in the sum of two hundred and fifty pounds each. Upon the sums being named, the Chief-Justice remarked, that he had no objection, but he should have gone higher, had he fixed the bail, and then directed that the defendants should not be admitted to be bound for one another. Messrs. *Alexander M'Kenzie, John M'Laughlin, Hugh M'Gillis, John M'Donald, and Simon Fraser*, severally gave the required bail.

PAUL BROWN and FRANÇOIS FIRMIN BOUCHER, two of the principals accused of the murder of Mr. Semple, and others, were then put to the bar, and arraigned upon the indictment: Counsel having been assigned them by the Court, they severally pleaded "Not Guilty," and Monday the 26th was fixed for proceeding with their trial.

MONDAY, the 26th of OCTOBER, 1818.

The prisoners Paul Brown and François Firmin Boucher, being put to the bar, the jurors were called, and after various challenges on the part of the prisoners, the following persons were sworn.

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| John Wilson, (3d) | John M'Dougall, junior |
| George Bond | William Moore |
| Joseph Harrison | Alexander Montgomery |
| Joseph Shepherd | Peter Whitney |
| Michael Whitmore | Richard Herring |
| Joshua Leech | Harbour Simpson. |

The Solicitor-General briefly stated the tenor of the indictment.

The Attorney-General commenced his speech by stating to the jury, that according to the Canada Jurisdiction Act, the original cognizance of the offence charged in the indictment was given to the Courts of Lower Canada, but that it had been transmitted by an instrument under the great seal to Upper Canada, and that in consequence, the jury were impanelled to try it as an offence committed in their own district, and that it was so charged in the indictment. He stated, that about six years ago, the Earl of Selkirk established a Settlement on the banks of the Red River in the Indian territories, and that differences had existed between his settlers and other persons following their occupations there. The Settlement was erected in a country where a number of merchants, associated under the name of The North-West Company, had been accustomed to trade, and its population consisted chiefly of persons who had emigrated from the parent state. They had been settled there for four or five years before the unfortunate and horrid catastrophe of the 19th June, as farmers; they followed their agricultural pursuits, houses were built, their farms were cultivated, and every thing was proceeding according to the ordinary course of a new Settlement. In the vicinity of this Settlement at the Forks, as they are called, of the Red River, was a fort called

Fort Douglas*, which was occupied by Mr. Semple, the unfortunate gentleman whose death was charged in the indictment, and who was the Governor of a territory ceded by the Hudson's Bay Company to the Earl of Selkirk†. The natural state of the country (even if this infant Settlement had experienced no previous disasters), would render it necessary to have a place of strength in its neighbourhood, and this fort was such, being constructed at the Forks of the River Ossiniboyne and Red River, contiguous to the farms, and serving as a residence for the Governor, Sheriff, and other officers of the colony. A few miles below this fort was the Settlement, extending along the Red River for the space of two or three miles. The Attorney-General then gave a statement of the evidence he intended to produce; and he observed that the circumstance of the party which attacked Governor Semple, coming painted and disguised, shewed a premeditation to commit hostilities. That Governor Semple had gone out to watch these persons with no hostile intention was evident from his taking only twenty men with him, whereas there was a much greater number at the fort who could have gone and were desirous of going. It was no excuse to say, that if he had not gone out of the fort they would not have gone to him, any more than an act of indiscretion, in itself unjustifiable, can be pleaded in justification of murder. But that, in fact, the conduct of Mr. Semple evinced only a natural and praise-worthy anxiety for the fate of those who looked up to him for protection. That the disposition of the armed party was manifestly different from a mere desire to protect themselves, because they fired upon several of the settlers after the fray was ended, and all shew of resistance had subsided, if ever any was made. That their object was to destroy the Settlement, appeared from their firing on persons who had not been near the scene of desolation, and from whom no provocation could by possibility have been received.

* Fort Douglas is about a mile from the Forks down the river.

† Mr. Semple's commission was as Governor of the whole territory of the Hudson's Bay Company.

That it was not necessary to shew, that in charging Cuthbert Grant as principal in the first degree, the person had been named who did with his own hand murder Governor Semple, for the moment it was established that the crime was committed, and that the prisoners were present, aiding and abetting the murder, (and if they were present, the law considers them as aiding and abetting,) it became the duty of the Jury to find them guilty of the crime whereof they were accused.

MICHAEL HEDEN *was called and sworn.*

Examination conducted by the ATTORNEY-GENERAL.

Heden. I resided in the month of June 1816, and for some time before it, at the colony at Red River. I was blacksmith there. I had lived there a long time before, for a space of three or four years. In the months of April, May, and the beginning of June, of that year, I was there. I knew one Mr. Semple, his name was Robert. He came out to the Settlement in the fall of the year 1815, and acted as Governr. He was Governor of the Settlement. I know something of the death of Governor Semple.

We were warned in March by the free men and Indians in the neighbourhood, that the Settlement was to be attacked during the summer, and we were all much alarmed, because it had been attacked before, and we kept a constant watch, after receiving the information, at the fort. Mr. Semple resided at Fort Douglas, which stands upon the Red River. There was a settlement lower down upon the river; a settlement of the same kind as are upon these rivers; they were just beginning to build houses; there were none built at that time, the settlers lived in tents, and in the fort; the highest part of the Settlement was about a quarter of a mile from the fort, and extended to about three miles below. There was a part of the land cleared, and crops had been raised and come to perfection. Potatoes, corn, barley, and different kinds of vegetables, had been grown. In consequence of the information

which was received, a constant watch was kept, day and night, from a sort of watch-tower. Between six and seven o'clock, as I think, on the evening of the 19th June, that year, the man in the block-house, who was at the top, keeping a look-out, to see if these people were coming, I do not know the time exactly, but it was six or seven o'clock, or thereabouts, I think, when the man at the block-house called out, a party of horsemen with two carts, were coming towards the Settlement. Governor Semple directly went into the watch-house, and Captain Rogers with him, and looked with his spy-glass to see what they were. When he saw that they were armed and on horseback, he told about twenty of his people to get their arms and follow him, to see what these fellows were about, or what they wanted. The men, to the number perhaps of twenty-eight, were ready to go, but Mr. Semple would only let about twenty accompany him. He had not got far when we met some of the settlers running towards the fort, saying, that the North-West servants were coming with carts and cannon, and that they had taken some prisoners. It was some settlers whom we met running towards the fort, who said they were coming with carts and cannon. They said the servants of the North-West Company were coming, and that they had taken some of the settlers prisoners. We went on after hearing this for about a mile, when we met more settlers, who told us that they had both carts and cannon. Governor Semple then told one of his men to go to the fort, and get a small piece of cannon which was there. It was to Mr. Bourke that he gave these directions; he told him to make haste, and go to the fort, and get a piece of cannon, and to tell Mr. Macdonell to send as many men as he could spare. Mr. Bourke not coming back soon, we went on towards the Settlement, and when we came in sight of the party of half-breeds, they galloped up to us, and almost surrounded us, by making themselves into the shape of a half-moon, going to the river on the one side, and getting beyond us on the other. One of their people on horseback came up towards us. It was Boucher. He came up towards us, and the Governor asked

him, "What he wanted?" and Boucher said they wanted their fort. He said, "We want our fort." Mr. Semple answered, "Well, go to your fort," and Boucher answered, "You damned rascal, you have destroyed our fort, you have 'took down our fort.'" Upon this Governor Semple said, "You scoundrel, do you dare to tell me so?" and called out to some of our people to make him prisoner, and laid hold of the reins of Boucher's bridle.

Chief-Justice. Was there any action accompanying the words made use of on either side? how were they spoken?

Heden. They were spoken in a loud voice, but there was nothing done except that Governor Semple laid hold of the bridle of his horse, when Boucher told him he had destroyed their fort; and he kept hold of it for some time. When Boucher heard Governor Semple call out to us to take him prisoner, he slid off his horse on the other side, and ran away. When Boucher came forward towards our party, we were within about a gun-shot of each other. There was nothing between us but a few willows and brush, every thing was visible. As soon as Boucher slid off his horse, a shot was fired, and Mr. Holte fell. The half-breeds fired the first gun, and by it Mr. Holte was killed; there was no firing before that, and immediately after another was fired, almost directly after, and Governor Semple fell.

Attorney-General. In coming along, did any of your party discharge a gun, or did one go off by any means, and if there did, tell us how it happened, and where about you were at the time?

Heden. At about half a mile from the fort, Mr. Holte's gun went off by accident, and Mr. Semple was very much displeased, and told Mr. Holte very sharply, that he should be more careful of fire-arms, or he might kill somebody; this was some time before our coming up with the half-breeds, and had no connection with the firing between the parties. It was quite an accident. The two shots of which I spoke, when I said they were the first that were fired, came from the half-breeds.

Attorney-General. Where were you, Heden, at the time these shots were fired?

Heden. I was on the right of the Governor, and very near him. All our party were withinside of the half-moon line, but they were scattered here and there, before the shots were fired by which Mr. Holte and Governor Semple fell. It was just as Boucher slid off from his horse, that the first shot was fired, and by it Mr. Holte fell.

Attorney-General. You remember the parley between Governor Semple and Boucher. Were Holte and Boucher during that time looking towards the half-moon line?

Heden. Yes, they were. My gun was loaded. Our guns were some of them loaded, and some not. Those that were loaded were loaded with ball, as I suppose. We had no other arms but guns. Boucher's arms consisted only of a gun, but others of his party had tomahawks, bows and arrows, and spears. Both Mr. Holte and Governor Semple fell by the two first shots, and after them, when the people had gathered round Mr. Semple, and were in a cluster, the volley was poured in, and nearly the whole were killed or wounded.

Attorney-General. Now, Heden, from the situation in which you stood, can you say that you know the two first shots came from the half-breed party?

Heden. Oh, my God! I could not but know, for I saw all, and shall never forget it.

Attorney-General. Whereabouts was Governor Semple, that is, opposite to what part of the semicircle or half-moon line was he?

Heden. He was pretty near the centre of the half-moon, and the two first shots came from about the centre of the half-moon. I saw the smoke, and could not be mistaken. Boucher slipped off his horse before the first shot was fired, and ran towards his own party. There was none fired before that. I did not see Boucher fire, nor do I know that he did fire. I do not know which of our people fired. I know that Mr. Semple blamed Mr. Holte very much for letting his gun go off.

Attorney-General. Did Mr. Semple, or any body else, give you orders to fire, or say any thing about it?

Heden. Mr. Semple said, all he wanted was to see what those fellows were about, and that he wanted no firing at all. I heard him say that he wanted no firing at all, and I heard him tell some of his people to take Boucher prisoner, but not to fire, and if he had given any such directions, I must have heard them. There was no order of march kept up by our party, we went as it happened, or we liked. Mr. Semple gave no particular orders to his men how to behave. To the best of my recollection, he gave no orders at all. I am sure he did not give any to fire, nor did any of our people, to the best of my belief. At the time of the conversation between Boucher and Governor Semple, I was looking towards the half-breeds, and I saw amongst them three Indians in blankets, and only three, and they did not fire. The Bois-brûlés, before any firing took place, gave the war-whoop; they gave it as they were forming the half-ring. I got very much alarmed when I saw the people wounded, and in the confusion that took place I made my escape with my life.

Attorney-General. How long was it, or was it soon after Governor Semple fell, that the general firing by which the others were killed and wounded took place?

Heden. I cannot say how long exactly. I was very much frightened when I saw Mr. Holte and Governor Semple fall. A short time after I saw the wounded men crying for mercy, but the half-breeds rode up to them and killed them.

Attorney-General. You saw Mr. Semple fall by the second shot, do you know whether that shot killed him?

Heden. I did see Mr. Semple fall, but I don't know whether that shot killed him. As soon as he was wounded he called to his people to take care of themselves. He was wounded, as far as I can guess, about the shoulder. I did not see Governor Semple get up after he was wounded; he did not while I was there. One M'Kay and I, in the confusion, made our escape, and got to the river. Michael Kilkenny and one named Sutherland also

got away to the river, and swam across it, and by that means got safe. Mr. White, the surgeon, thought also to escape with us, but we were pursued by six men who fired at us, and wounded him in the thigh or the hip, and whilst they were engaged in killing him, we escaped, M'Kay and I, by a canoe, and Kilkenny and Sutherland by swimming. In the course of the night we got back into the fort. On the next day I saw the dead bodies, and nine of them were brought in by the Indians, and among them was the body of Mr. Semple. I could not say where the ball struck him; or by which wound he lost his life, as his body was all over spear-marks, so that I could not distinguish one from another. The Bois-brulés were very strongly armed; they had, besides, guns, bows and arrows, spears and tomahawks. I saw a number of the half-breeds the next day at the fort, and Cuthbert Grant was amongst them. They took away a good deal of the property. The next day after the massacre we remained at Fort Douglas, and also the following day, when the half-breed party, headed by Cuthbert Grant, took all the public property, and all the settlers were obliged to go away, and a good deal of our things were taken from us.

Chief-Justice. It is not larceny, Mr. Attorney, that we are trying, but a murder. You must keep your evidence to that point.

Attorney-Général. It is necessary that, by the subsequent conduct of the prisoners, I should shew their prior intention.

Chief-Justice. Any thing bearing on the charge of murder, you may go into, but you must not adduce evidence relative to offences for which the prisoners are not upon their trial.

Heden. The Bois-brulés encamped that night at the Frog Plains, and the next day they came to the fort, and ordered the settlers away. I saw Boucher at the fort on the next day; he was not armed, but he came with the others. I know Cuthbert Grant, he was there on the day of the murders, and he came to the fort the next day. He is a Bois-brulé, and was one of the band of Bois-brulés. The Bois-brulés insisted upon our giving up the fort, and going

away from the Red River country, and a capitulation was entered into between Mr. M'Donell the Sheriff, and Cuthbert Grant, by which the fort, with all the public property, was to be given up, and we were all to go away. Cuthbert Grant was with the half-breeds at the time Mr. Semple and the others were killed. I know him very well, and I am sure I saw him there. He was painted.

Mr. Sherwood objected to entering into evidence of what occurred after the battle, and, after some discussion, the Chief-Justice ruled that the witness might be examined to any thing that occurred previous to the death of Mr. Semple, but not to events subsequent, as they could not influence it: however that after proving Grant was present on the 19th of June, it was competent to the Attorney-General to ask questions for the purpose of elucidating the principle of action, or the motives that governed the conduct of the party opposed to Governor Semple.

Heden. I did see Cuthbert Grant there, and he was armed, but I cannot say that he fired, for I did not see him fire. I saw him on the next day at the fort, and he then acknowledged that he had fired the day before, but he did not confess that he had fired at Governor Semple. He told me to be gone from that part of the country, and warned me when I did go, which he said would be in a day or two, never to come back, at the peril of my life. I saw nothing of the prisoner Brown till the next day; he was not in the company of the party who came with Cuthbert Grant on that day to the fort, but he came with them at the time we all went away, and left their party in possession of the fort. On the day after the battle he came to my tent, and there he told me that he had been there the day before. He had two pistols in his sash, and he put one to my breast, and threatened to kill me, and I believe would have done so, but for an Indian woman who was in my tent. He told me he had killed six Englishmen, and I should be the seventh. He talked both in Indian and French, in broken French, and he made signs by which I understood very well what he meant. I had not seen him before that day, but I am sure

the prisoner Paul Brown is the man who came to my tent, and told me that he had killed six Englishmen. He did not say when or where he had killed them, he only said he had killed six Englishmen, and I should be the seventh, but he did not say where or when he had killed them. He said that he had killed six Englishmen, and that I should be the seventh, and that he would not leave the tent till he had taken my life. By the six people he said he had killed, I understood him to mean six of the party who were with Governor Semple on the day before. I had no conversation with him at the time about Governor Semple, but that was what I understood. At that time I believe that Brown would have killed me, but that he was hindered. I do not know that Brown was in the affray of the 19th; I do not recollect to have seen him before he came to my tent. I have no recollection to have seen him on the 19th, but I am sure it was him who came to my tent on the 20th, and said he had killed six men, and I should be the seventh. I did not see Boucher after he joined his party, which he did directly he slid from his horse. I am certain that I saw Cuthbert Grant there on the 19th June, and that he was armed and painted; but I cannot say whether he took the command, but I always understood that he did.

Attorney-General. You have said, I think, that you saw Governor Semple fall, and that on the next day you saw his body. I think, in answer to a question I put to you, as to whether you saw any wounds which had apparently been given by the balls, you said the body was so completely lacerated with the marks of spears, that you could not distinguish. Was that the case?

Heden. Yes, it was. His body was all over spear-holes, so that I could not see whether there was any ball-holes or not. I could not distinguish.

Cross-Examination, conducted by Mr. SHERWOOD.

Heden. I do not know how far it is through Lake Erie and the Woods to Red River country, but it is a long distance. There are no civilized courts there, having judges.

Mr. Sherwood. Do you know, that before this battle of the 19th June, in which your party appear to have got the worst of it, long before, that enmity and war subsisted between the Hudson's Bay Company and the North-West Company, and their servants, in that country.

Heden. I know that in 1815 we were turned out of the Red River country, and the Settlement burned, and the fort; by the fort, I mean Fort Douglas.

Mr. Sherwood. Do you know of any disturbances between them before that, and that they were began on your side?

Heden. Yes, I know there were quarrels between them, but I do not know that the Hudson's Bay people began them.

Mr. Sherwood. Then I will try and refresh your memory. Do you happen to know whether there was any pemican seized by your people from the North-West Company, or any of their people?

Heden. No, I do not know of any being seized.

Mr. Sherwood. Oh, you do not, then you was not one of the party, nor do not know any thing about it?

Chief-Justice. What is this about seizing pemican? If witness had seized it, or been engaged in seizing it, or any thing else, however improperly, how is such a circumstance to be a defence against an indictment for murder?

Mr. Sherwood. I beg your Lordship's pardon, but the defence we shall set up for these men, renders it extremely important that I should have an answer, and a clear and positive answer to the question I have put; and I am confident, as I consider it important, I shall be permitted to put the question to the witness again. I ask you now, Heden, on the oath you have taken, do you know of a quantity of pemican having been seized by your party from the North-West Company, in consequence, or by virtue of a proclamation of Mr. Miles Macdonell, whom I believe, you called Governor Macdonell? Do you, or do you not?

Heden. No, I do not. I was not there when any was taken.

Mr. Sherwood. Very well. In what capacity did you go to this land of promise, and where did you go from?

Heden. I went as a servant to the Hudson's Bay Company in 1812, from Ireland. I agreed with his Lordship's agent at Sligo. I was to work as a blacksmith for a year for the Hudson's Bay Company, and then to go to the Settlement, and have lands. I went there by the way of Hudson's Bay. There were no quarrels there in 1812; at least, I heard of none. I do not know if the lands I had were brought from the Indians or not. There is not in that country a surveyor-general's office, or a council-office, as there is at York, to grant lands there. I did not pay for them. It was agreed with Lord Selkirk, I was to have lands there before I went.

Mr. Sherwood. Then how dare you, or any body else, go and take lands in that country, any more than this? Would you think of taking lands in Upper Canada, without paying for them, or without a deed, or a scrape of a pen, to shew your right to them? Do you know who gave Lord Selkirk authority to let his agent agree to give you lands there?

The Attorney-General objected that the nature of the witness' engagement with the Hudson's Bay Company, or with the Earl of Selkirk, had nothing to do with a charge against the prisoners at the bar for murder.

Mr. Sherwood and Mr. Livius Sherwood contended that this was a case completely *sui generis*; that the Attorney-General had not confined himself to the circumstances actually connected with the affair of the 19th June, which compelled them to have recourse to similar evidence, and it therefore became their duty to shew that such was the state of that country, arising from the disputes occasioned by the conduct of this colony and its adherents; that it was only a great trespass that could have been committed there, and not murder: what would have been murder here, was only misdemeanour.

there. War existed between the two companies and their servants, similar to those which arose between the Lords Marchers, in feudal times, and, upon the authority of Hale and Blackstone, such wars amounted to nothing more than a great riot and contempt.

The Chief-Justice determined, that the question might perhaps be so put as to ascertain whether the settlers at Red River had a quiet possession, but it could not be permitted to be taken any farther. He continued; "the question of Mr. Attorney-General was to shew the disposition in which they left home, and came to this place, and any thing that will shew the temper of mind of these people, must undoubtedly be evidence in an offence where the *quo animo* is the very foundation of the crime. On the other hand, you certainly are at liberty to shew any thing you can, that will demonstrate the temper of mind, created by circumstances of continued irritation, to be such as must reduce, on the part of the prisoners, this case from aggravated murder to manslaughter: so long as you shew a continuance of this irritation, by proving that the state of excitability in which the tempers of these people were left by the contests in which they were engaged, never allowed their passions to cool, you may certainly go back to any distance of time; but you must never lose sight of this rule, that it must be an uninterrupted irritation, of an extent sufficient to diminish the crime to manslaughter, if proved against the prisoners."

Cross-Examination, continued by Mr. SHERWOOD.

Heden. I was in the battle of the 19th June, 1816. I did not see the cannon which the settlers we met said the Bois-brulés had with them.

Chief-Justice (to Mr. Sherwood). My brother Campbell has just spoken to me, to say that he wishes you most perfectly to understand, that though you are permitted to go back, you must go no farther than you can keep up a degree of excitement sufficient, if the prisoners should be found guilty of the death, to diminish the offence to manslaughter. I therefore remind you of it again.

Cross-Examination, continued by Mr. SHERWOOD.

Heden. The Bois-brulés did not come to our fort on the 19th; they kept at about a quarter of a mile distant from it, and passed it. We had cannon at the fort.

Mr. Sherwood. Did you take them to the battle with you, or did Mr. Semple send for them afterwards?

Heden. No, we did not. Mr. Semple sent Mr. Bourke for one, after the people met us, and said the half-breeds had come with carts and cannon.

Mr. Sherwood. Did Mr. Semple want a cannon to see what those fellows were about, or what did he want it for, if he did not go out to fight?

Heden not answering for some time, the question was repeated, Mr. Sherwood adding, that he insisted upon an answer, though the witness was swearing in his own cause.

Chief-Justice. Do not say that, Mr. Sherwood. He is a witness brought here on the part of the Crown, and entitled to, and shall receive the protection of the Court. Every man is bound to appear in Court and give his evidence in all cases when subpoenaed, whether of breach of the peace, felony, murder, or any other. Do not, therefore, talk of being a witness in his own cause, when he is here on behalf of the Crown.

Mr. Sherwood. I assure your Lordship that no word shall be used by me that is not well weighed; he has told us he was in the battle himself, and before we have done with the business, we may perhaps give a very different appearance to the proceedings of the 19th June, to what Mr. Heden has put upon them. You was in the battle, was not you, on the 19th June?

Heden. I do not know that it was a battle.

Mr. Sherwood. Why I thought you said just now, that you was in the battle.

Heden. I do not know that it was a battle; we were ordered not to fire, but if it had been a battle, I should suppose we would have fired. We did not go to fight; all the Governor said, was, to see what those fellows wanted.

Mr. Sherwood. You had guns when you went out, you say; had they bayonets to them?

Heden. Yes, some of them had bayonets, not all.

Mr. Sherwood. If you did not go to fight, what did you want with bayonets; were they to spear fish?

Heden. I do not know. I only know that the Governor's orders were, not to fire; he said he did not want any firing at all; he only wanted to see what these people wanted. He said, we must see what those fellows want.

Mr. Sherwood. Take care and don't swear too fast. As he was your Governor, you, I suppose, were bound to do all he told you to do. If he had led you out to attack this party, who had passed your fort without molesting it, you would have been bound to obey him, as you say he was your Governor?

Heden. He was our Governor; we always called him Governor, and obeyed him as such; I do not know how he was a Governor; I never asked him: it was not my place to do so.

Mr. Sherwood requested permission of the Court to inquire of the witness concerning the right of Mr Semple to the title of Governor; this was necessary in order to counteract any unfavourable impression arising from his being called Governor in the Attorney-General's speech.

The Attorney-General observed, that the prisoners were accused of murdering Robert Semple: he did not admit that Mr. Semple was not a Governor legally constituted, but that as it did not at all concern the present subject, he should forbear all discussion upon the point.

Mr. Sherwood. Do you remember any conversation at the time of your going out with Mr. Semple? Do you recollect his saying any thing about taking of pemican?

Heden. I do not remember any conversation at the time of going out, except what I have mentioned about going to see what they wanted. I am sure that we did not go to take pemican, nor did I hear Mr. Semple say any thing about taking it from the North-West Company, or that he would have their lives. I know what pemican is. I have frequently ate it myself; it is food prepared

for the support of the traders, and is carried frequently from one post to another, where it is wanted. I do not remember any other conversation but what I have told. The half-breeds had passed our fort before we went out; they did not interrupt us in going by. I cannot say whether they would have come back to us, if we had not gone out to them. The rivers which form what are called the Forks of Red River, are the Red and the Ossiniboine Rivers, and Fort Douglas is at the Forks. The Red River receives the Ossiniboine River at the Forks, and they both fall into Lake Winnipic. (*A map was here handed to witness, who said he did not understand much about maps.*) The half-breeds were mounted on horseback. Fort Douglas was fortified. It had been fortified for fear of the North-West people and half-breeds coming. I did not hear Governor Semple say that he would fire on the half-breeds, nor did I hear Mr. Holte or any other person say they would. I read and write very little. I do not think I should know Mr. Holte's writing. (*A letter was here shewn, but he said he could not say whether it was Mr. Holte's writing or not.*)

Mr. Sherwood. Did you ever say to any body, no matter whom, "We have been disappointed, we deserved what we got; we fired first, and if we had got the better, we should have served them the same;" or words to that effect? Now, recollect yourself. Did you ever tell any body so?

Heden. No, I did not. I never said any thing like it.

Mr. Sherwood. And every thing you have sworn to to-day, is as true as this, is it?

Heden. Yes, it is all true.

Mr. Sherwood. I ask you, is it all as true as this, "that you never said your party fired first?"

Heden. I never did say so; I could not, because I knew the half-breeds fired first; and all I have sworn to is as true as this.

Mr. Sherwood. You have spoken of a report that you were to be attacked; where did that report come from?

Heden. We were warned by some Indians, that they

were gathering at Qui Appelle to attack us, and we had been told before that we were to be attacked. They did not tell us that Brown and Boucher were to attack us. There was a fort a little above Fort Douglas, belonging to the North-West Company; I was told it was destroyed, but I do not know that it was: it might have been sent down to Fort Douglas in a raft, and I might have seen it, but I do not know that I did. We see so many rafts there, that it would be hard to tell one raft. It was generally said, Fort Gibraltar was taken by the Hudson's Bay people, that is all I know about it.

Attorney-General. It is no matter; for it cannot be evidence, either one way or the other. It has nothing to do with the case.

Chief-Justice. I do not know; it may depend upon how long it was before this affair of the 19th June took place.

Mr. Sherwood. I will ask you once more before I finish with you, did you ever tell any body in this town, or any where else, that it was your party or the Hudson's Bay people, who fired first?

Heden. I have told you before.

Mr. Sherwood. And you must tell me again.

Heden. I never did say that our party or the Hudson's Bay people, fired first. When Boucher said he wanted their fort, he did not say Fort Gibraltar, but I do believe that he meant Fort Gibraltar.

Re-examined by the ATTORNEY-GENERAL.

Heden. I do not know that it was taken, for I did not see it taken. I heard that it was taken in March.

Attorney-General. And this battle was on the 19th June, I should therefore think, it can be of no consequence.

Mr. Sherwood. We have as yet only got a part of the truth from this witness, but we shall prove it by others. It was taken in the early part of the summer, and floated down to Fort Douglas. The Red River is frozen up in March, and long after, therefore it could not have been

in March. You say you had notice some time before, that the half-breeds were to attack you. What was the information which you received?

Heden. We were told, they were to assemble at Fort Gibraltar, when the river broke up, and attack us.

Mr. Sherwood. And you, like good generals, attacked them first; however, we will leave the fort, as you did not see it taken, and go to Paul Brown, of whom you have given us this terrible account. You say he spoke to you in the Cree language. Have the goodness to tell in *Cree* what he said.

Heden. Brown, when he came to my tent, spoke in Cree. *Witness here repeated some Indian words, and said that in English it was,* "I have killed six Englishmen, "and you shall be the seventh." I had no quarrel with Paul Brown. It took place on the 20th June, the day after the battle at the Plains. I can talk a little Indian, and so I could in June 1816, when this happened. I should have understood Brown, had I not been able to speak it, as he put up his fingers, and made signs.

Mr. Sherwood. I am afraid your Indian education is of a very recent date. Can you say any thing else in Cree, or, I ask you on your oath, could you at that time speak any Indian?

Heden. I could speak it then as well as now.

Chief-Justice. He says, if he had not spoken it, he should have understood the prisoner by the signs he made; besides, he has given you the words, and swears that he knew them then as well as now, and he has given you their meaning; there are persons here understanding Cree, I dare say. You understood him, did you, by what he said, and by signs?

Heden. I understood the words he said, and I should have understood them by the signs he made. I do not know of any pemican being taken. I did not assist to take any; there was a report of it having been taken from the North-West Company: this was about 1813 or 1814.

DONALD M'KAY, *sworn.**Examined by the SOLICITOR-GENERAL.*

Donald M'Kay. I arrived in the Red River country in 1812, and I was there in 1816, in the month of June. I heard, a little before June 1816, of threats to destroy the colony at Red River. I had, as long as I had been there, heard that its destruction was threatened, but I heard it then more particularly than before. I saw in that year, in the month of May, Cuthbert Grant, at River Qui Appelle, as I was stopped by him; I do not know if Boucher was with them, but I saw him afterwards, at Brandon House. I was coming down the River Qui Appelle with provisions, and was stopped by Cuthbert Grant, and made prisoner by him and an armed party, and taken back to the North-West Company's fort at Qui Appelle. It was in May that same year, that this happened. Cuthbert Grant and the prisoner Paul Brown were among that party, but Boucher was not. There were about twenty-seven, or twenty-eight persons, but with the Bois-brulés there were fifty or sixty. I saw François Deschamps, and he was there. Cuthbert Grant commanded the party who took me prisoner. Whilst at the fort at Qui Appelle, (where I was kept four days), I heard Deschamps say, they must go down and destroy the colony at Red River. I saw the prisoner Boucher at Brandon House, he said he was glad our people were taken at Qui Appelle; and when I answered that there were a good many more at the Settlement, he said they would go down and destroy it. This was the very end of May, or might perhaps be in June. We left the armed force which had taken me prisoner at the fort at Qui Appelle, and went on to Brandon House. Boucher, one of the prisoners, was there. Hoole was not, neither was Grant. Very soon, I believe, only one night after, we continued our route to the Settlement. I heard no other than, what I have told, but when we got to the Settlement, we heard the report that they expected to be attacked, and they were armed to

protect themselves. We always kept a look-out at the fort, and on the 19th June, some one at the look-out gave notice that a party were coming down towards the Settlement. The Governor came out with a spy-glass, and after looking through it, he called to about twenty of his people to go with him, and see what they wanted. I was one that went out with Governor Semple. We were armed, and as we were going along, Mr. Holte's gun went off by accident, and the Governor scolded him for not taking better care. A short time after this, we were surrounded by this party, who were generally painted. I knew some of them; we were close to them, or nearly so, but I do not know if Boucher was painted, or if Deschamps was there. They were strongly armed, having guns, bows and arrows, spears, and tomahawks. When they were surrounding us we stopped, for they came up very quick, being on horseback, and were going to fire. Mr. Semple ordered us to stop, and see what they would do. I heard a shot fired, *and on turning round I saw Mr. Holte fall*, but before that took place, Boucher came out from his party, and came over to ours, and had some conversation with the Governor, and I saw the Governor catch hold of the butt of his gun. I heard at the same time some words, but could not understand what they were. Boucher then sprang off his horse.

Mr. Sherwood. Will your Lordships allow me to ask you if you have taken that the witness saw Mr. Semple take hold of the butt of Boucher's gun, because I consider it very material?

Chief-Justice. I have taken it. What did Boucher do when Mr. Semple took hold of the butt of his gun?

Mr. Kay. He got off his horse, and as soon as he was off, I heard a shot, and saw Mr. Holte die, and immediately after, another. I afterwards saw that most of my party were down. Governor Semple was killed directly after Mr. Holte, for two shots went off directly after one another, by one of which (the first) Mr. Holte fell, and by the other, Mr. Semple, who immediately called out to his

people to do what they could to take care of themselves. *Most of our party were then fallen, the half-breeds rode up to the wounded.* I did fire myself, but not before Mr. Holte and Governor Semple fell, nor did I hear, nor do I believe, that any of our party did. I do not know what they did after I saw most of our people down, as I endeavoured to make my escape. The next day I saw one of our party, whom I had heard call for mercy, with his head cut open. Some of this party were Indians, and some half-breeds, and some Frenchmen. Cuthbert Grant was there, but I do not know that he was at the head of the party. The half-breeds do not generally paint; it is not common for them to do so. There were only three or four of our party who made their escape. I got to Fort Douglas that night, and I slept there; the next day I saw Boucher come in with the party to the fort*. I knew Grant, Boucher, Fraser, and Paul (*the prisoner Brown*), who were among them. I do not know if they were all there the day before. I, that day, heard Brown ask where

* A witness (James M'Intosh) was produced to the Attorney-General, and gave testimony that on the second day after the murder of Semple, Boucher was at Fort Douglas, busily engaged in securing the property, which had been given up to Cuthbert Grant and the North-West Company, as the price of the lives of the settlers. M'Intosh on that occasion had been present, when one of the half-breeds was in the act of carrying off a trunk belonging to the late Governor Semple: that gentleman's personal servant interfered, and claimed the trunk as belonging to his late master, upon which Boucher advanced, and took the trunk from him, saying that "it belonged to the man who had killed his master." One Donald Livingston also was ready to give evidence that on the day after the massacre, he saw Boucher with a number of half-breeds, enter the habitation occupied by Mrs. M'Lean, whose husband had been killed the preceding day, and rob her of a number of articles, her private property. He had also seen Boucher actively employed in carrying off the arms of which Grant and the other half-breeds took possession at Fort Douglas, when they had compelled the settlers to surrender. This testimony of Livingston and M'Intosh was taken down in writing, and put into the hands of the Attorney-General, but that gentleman did not bring them forward as witnesses. Its relevancy as indicating the original unlawful purpose of the half-breeds, in the prosecution of which they occasioned the death of Governor Semple, is submitted to the consideration of the reader.

Heden was, and his (Heden's) wife said he was in the tent, and I heard Brown say, that he would kill him. I saw Governor Semple fall. I cannot say if Cuthbert Grant fired at him, nor if the shot I saw him receive killed him, nor did I see him alive afterwards. He was wounded in the thigh and in the arm. I did not see him buried.

A Juror. Was there any blood when Mr. Semple was wounded and fell?

M'Kay. Yes, there was. *I saw him bleeding at the arm.*

Chief-Justice. Did you not say, that you went away directly you saw Mr. Semple fall?

M'Kay. When I made my escape I only saw four or five of our party alive. When we went out I heard Mr. Semple say nothing but that he would go and see what those people wanted, or what those fellows were doing. As we were going along, the women came running towards us. There were some of the settlers taken prisoners before the party's coming up, and I saw them, but I did not see them taken. *I saw the half-breeds riding down among the houses.* The gun by which Mr. Holte was killed was not fired near me, nor by any of our party, as I think; if it had been, I must have heard it nigher. My back was towards Mr. Holte at the time, and when, on hearing the report of the gun, I turned round, I saw him down, being wounded. I only saw one of our party fire, and he was with me; it was on our retreat; a man on horseback was coming down upon us with a spear, and we fired.

Cross-Examination, conducted by Mr. SHERWOOD.

M'Kay. I did not see Boucher fire during the whole affray, nor did I see Brown there. I do not know that Fort Gibraltar was taken from the North-West a little before the provisions were taken from us by them. I do not know of any other pemican being taken. I do not know of any thing taken from the North-West Company. I know Mr. Miles Macdonnell; he had command of us before Governor Semple. I know of a Proclamation of

Miles Macdonell. I read but very little, not enough to understand the Proclamation, but I know there was one. After this Proclamation, I do not remember that two trains of pemican were taken, but I do know of some boat-loads being taken by our people from the North-West Company, but I do not know the quantity, but I believe two boat-loads. I do not know any thing of the great quantity of pemican taken by Mr. Spencer, amounting to five hundred bags. I do not know of any pemican being taken by the North-West people, before this was taken from them. There were cannon at Fort Douglas, but I do not know that they were to prevent the North-West people going down. I heard no threats from Governor Semple that they should not pass, or that he would fire on them if they attempted to pass. The party had provisions, and went with carts, but I do not know why. The North-West Company had been accustomed to send their provisions by water, and they came from the River Qui Appelle to Portage des Prairies by water this time. Portage des Prairies is a good day's march from Fort Douglas. At the time that Governor Semple and the rest of us went out, the other party were going towards the Settlement, they had passed the fort, but had not come towards it. I saw Mr. Semple seize the butt of Boucher's gun, but I did not hear whether he threatened him, or whether Boucher was in fear of his life. I did not hear what passed on either side.

Mr. Sherwood. Did you not observe what Boucher did; did he laugh, or did he cry, or what?

M'Kay. He did not laugh certainly. I did not hear what passed. I fired myself, as I was running off, at a man who was pursuing me. At the time I heard our people crying for mercy, it was before I went away. Both parties were then close together, and some of them were running about. John Green it was that I heard call. I heard Governor Semple order Mr. Bourke to go for a cannon. I did not see that the North-West had any, but the settlers we met said they had, and then

Governor Semple sent for one. I did not see that Mr. Semple had a gun or a rifle.

Mr. Sherwood. You have been talking about a Settlement, will you now tell us what sort of Settlement this was; and what grew there?

M'Kay. There was a good many people there, perhaps forty or fifty, who lived near the fort. They had raised grain.

Mr. Sherwood. Grain! what sort of grain ever was raised?

M'Kay. Wheat and barley.

Mr. Sherwood. Do you mean to swear that they ripened?

M'Kay. Yes, it had ripened the year before, and was gathered, and potatoes in great plenty; wheat had ripened, and was sown again this year. Mr. Holte's gun went off quite by accident, and Mr. Semple was quite angry with him for not giving better care to his gun.

Re-Examination by the ATTORNEY-GENERAL.

You have said you know of pemican being taken from the North-West Company by the Hudson's Bay people; did you ever know of their people taking away the lives of any of the North-West Company, or do you know of any lives being lost in any other affray by the North-West Company?

M'Kay. No, I do not. I do not think there have been any.

JOHN P. BOURKE, sworn,

And examined by the SOLICITOR-GENERAL.

Mr. Bourke. About the month of June 1816, I was at Red River; there was a report current at that time of an attack being expected from the North-West people. I heard that they were assembling at a North-West post, but I know nothing myself of it being expected particularly from the people of Alexander M'Donell, but I know that

it was a general report that the Settlement was to be attacked, and in consequence of this expectation, sentries were kept constantly at Fort Douglas. I remember the 19th June in that year; about five o'clock in the afternoon of that day, notice was given by the man upon the look-out station, that the half-breeds were coming down; and were going towards the Settlement. Mr. Semple took his spy-glass and went to the look-out station. I accompanied him, and after looking some time, he told about twenty men to follow him, and see what these people wanted, and a number accordingly went out, perhaps about twenty, or rather more: after going a little way, we met some women coming from the Settlement, running, and crying that the half-breeds were coming down upon them with carts and cannon. Upon this Mr. Semple sent back to the fort for a small piece of ordnance which was there; it was me that he sent; he desired me to go back and get the cannon, and tell Mr. Macdonell to send as many men as he could spare. I accordingly went back and got the cannon, but Mr. Macdonell could only spare one man; as I was returning, I saw the half-breeds coming up towards the Governor's party in a straight line. Presently after they made a half-circle, and nearly surrounded them; I saw the flash of a gun, and immediately after another, and shortly after I saw a general firing along the whole line of horsemen. The firing ceasing some time after, and seeing none of our party, I was afraid that I might be intercepted with the cannon. I therefore returned with it, but did not go back to the fort myself, as after we had gone a little way, I determined to go and see what had become of Governor Semple, being joined at this time by some men who had come after me from the fort. I therefore sent the man who had come with the cannon, back with it, through the bushes to the fort, and we went on to where we expected to find Governor Semple; when we had nearly got to where we supposed he might be, we saw some men in the bushes, and also farther on some men taking care of the people's horses, who were now dismounted and spread over the ground, but I did not see any of our people. I at first thought that these men in the bushes

were some of our people, who had made their escape. They called out to us, saying they wanted us, and called to me that the Governor was there and wanted me. I stood a little time, not knowing whether to go on or not, when they called out again, "Come on, come on, here is your Governor, and he wants you, won't you come and obey him?" They were concealed in the bushes and brushwood, but I saw presently afterwards that they were half-breeds, and I perceived one of them in a sort of shirt, with a large bunch of feathers in his hat, resting his gun upon a stump and levelling at me. I and those that were with me, immediately turned back, and as we were making our escape, we were fired at, and I was wounded, and one of the men who was with me was killed by another shot. I do not know any thing about who fired first at the Plains, but I always heard it was the half-breeds, and that Mr. Holte was killed by it. I never saw Mr. Semple afterwards. I saw a number of bodies from the window of my room, but being wounded, I could not go about. I saw both the prisoners afterwards on the next day at the fort, but I did not speak to them. I understood that they intended to kill two or three more, and I expected I was to be one. The fort belonging to the North West, at which I spoke of the people assembling to attack the Settlement, was their fort at River Qui Appelle, and Mr. Alexander Macdonell was in charge there. I saw Cuthbert Grant on the day after the outrage at the fort. I could not distinguish him on the 19th, but I always heard that he had the command on that day. I heard it generally said so.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Bourke. Ever since I came to the country in the Indian territory, I have been a clerk, partly in the service of the Hudson's Bay Company, and afterwards in the service of the Earl of Selkirk, at the Settlement at Red River. I have heard it reported, and I cannot say I have any doubt, though I do not myself know it, that Earl Selkirk is interested in the Hudson's Bay Company. I

have heard that he was a partner, and I do not myself know that he was not, any more than that he was. I always observed the orders of Mr. Semple, and I suppose his authority came from the Hudson's Bay Company. I know Mr. Miles Macdonell; he was at the colony before Mr. Semple, and I was there before he was. I have seen Mr. Macdonell write, and should know his hand-writing if I saw it. (*The Proclamation was then produced and shewn to witness, who said*), I believe the signature to this paper to be Mr. Miles Macdonell's hand-writing; I have no doubt of it at all.

Mr. Sherwood moved that the Proclamation be now read.

The Attorney-General objected to the paper being introduced as evidence on a charge of murder against the prisoners; that the line of defence adopted by the prisoners' counsel, was only a mode of justifying one crime by another: (admitting for a moment that unjustifiable acts had been committed by the servants of the Hudson's Bay Company), it surely was irrelevant to the purposes of the present trial, to prove a Proclamation made years before by a person whose name did not even appear in the present transaction.

Mr. Sherwood observed, that it was his intention, if permitted to read that Proclamation, to go on to shew, that without the food called pemican, trade could not, in that country, be carried on; then that it had before, when passing in boats, been outrageously seized; that at the moment the precaution was taken of sending it down under a guard competent to protect it, it was actually required to meet persons who were expected, and who, if they did not receive it, must starve; he should prove there was no intention of interfering with the colony; that the sole object was to carry provisions by the route that was left. Mr. Semple's people came out for the purpose of making an attack, and he trusted he should prove that they fired first; the circumstances of the country were not

like those of the civilized province of Upper Canada, where recourse could be had to the protection of the law; there a man was compelled to be his own protector.

Mr. Livius Sherwood contended, that it was open to the accused to shew whatever he could in the conduct of those who accused him that could in any degree account for his own, or reduce the enormity of the offence for which he was accused: on this principle the counsel of the prisoners proposed to put in the Proclamation, forbidding the exportation of provisions; then to shew, that the pemican was taken by virtue of it, and in this way to shew a train of circumstances down to this very day, which would lead to the conclusion, that a state of irritation existed from the imminent danger the North-West Company and their servants were at all times exposed to, of losing not only their property but their lives, by disobedience to that Proclamation.

The Chief-Justice expressed his opinion, that evidence should be admitted to shew an exasperated state of feeling, and that under it excesses had been committed; and that these repeated aggressions had created such an irritation in the minds of the party to which the prisoners belonged; which raised a suspicion of injury being done them whenever they met the opposite party, such as to justify, in the unhappy and peculiar state of that country, their resorting to arms for self-protection, even before an actual attack had been made upon them; that if the counsel for the prisoners could prove a constant irritation was kept up from any time down to this unfortunate 19th June, not only without interruption, but that the causes of this irritation were in such constant succession, as not to allow the passions to cool and reason to resume its sway, that it was no matter where they began. His learned brethren, under this explanation, that the irritation must be in such immediate succession, that there was no time for passion to subside, did not object to the Proclamation being read.

The following Proclamation was then put in and read.

PROCLAMATION.

WHEREAS the Governor and Company of Hudson's Bay, have ceded to the Right Honourable Thomas Earl of Selkirk, his heirs and successors, for ever, all that tract of land or territory, bounded by a line running as follows, viz:—Beginning on the western shore of the Lake Winnipic, at a point in fifty-two degrees and thirty minutes north latitude; and thence running due west to the Lake Winipigashish, otherwise called Little Winnipic; then in a southerly direction through the said lake, so as to strike its western shore in latitude fifty-two degrees; then due west to the place where the parallel of fifty-two degrees north latitude, intersects the western branch of Red River, otherwise called Ossiniboine River; then due south from that point of intersection to the height of land which separates the waters running into Hudson's Bay from those of the Mississouri and Mississippi Rivers; then in an easterly direction along the height of land to the source of the River Winnipic, (meaning by such last named river the principal branch of the waters which unite in the Lake Sâginagas,) thence along the main stream of those waters and the middle of the several lakes through which they pass, to the mouth of the Winnipic River; and thence in a northerly direction through the middle of the Lake Winnipic, to the place of beginning. Which territory is called Ossiniboia, and of which I, the undersigned, have been duly appointed Governor.

And whereas, the welfare of the families, at present forming Settlements on the Red River, within the said Territory, with those on the way to it, passing the winter at York and Churchill Forts in Hudson's Bay; as also those who are expected to arrive next autumn; renders it a necessary and indispensable part of my duty to provide for their support; in the yet uncultivated state of the country, the ordinary resources derived from the buffalo and other wild animals hunted within the Territory, are not deemed more than adequate for the requisite supply. Wherefore, it is hereby ordered, that no persons trading in furs or provisions within the Territory, for the Honourable Hudson's Bay Company, or the North-West Company, or any individual, or unconnected traders or persons whatever, shall take out any provisions, either of flesh, fish, grain, or vegetable, procured or

raised within the said Territory, by water or land carriage, for one twelvemonth from the date hereof; save and except what may be judged necessary for the trading parties at this present time within the Territory, to carry them to their respective destinations; and who may, on due application to me, obtain a licence for the same. The provisions procured and raised as above shall be taken for the use of the colony; and that no loss may accrue to the parties concerned, they will be paid for by British bills at the customary rates. And be it hereby further made known, that whosoever shall be detected in attempting to convey out, or shall aid and assist in carrying out, or attempting to carry out, any provisions prohibited as above, either by water or land, shall be taken into custody, and prosecuted as the laws in such cases direct; and the provisions so taken, as well as any goods and chattels, of what nature soever, which may be taken along with them, and also the craft, carriages and cattle instrumental in conveying away the same to any part, but to the Settlement on Red River, shall be forfeited.

Given under my hand at Fort Daer, (Pambina,) the 8th day of January, 1814.

(Signed) MILES MACDONELL, *Governor*.

By order of the Governor,

(Signed) JOHN SPENCER, *Secretary*.

Mr. Sherwood. Do you know of any provisions being seized, in consequence of this Proclamation, by the Hudson's Bay people from the North-West Company, and by whose authority, or who gave the orders?

Mr. Bourke. I do not know of any provisions being seized, but I have heard a report that there were some taken from the North-West Company by some of our people, but I do not know by whose orders, or that it was under the Proclamation of Mr. Macdonell. I know nothing at all of two bateaux-loads of pemican being taken, nor of five hundred bags of pemican, though I have heard it reported that there were, but I know nothing of it, of my own knowledge.

Mr. Sherwood. Are you acquainted with the taking of Fort Gibraltar?

Mr. Bourke. Unless I am obliged to answer that question, I shall not.

Mr. Sherwood. Why not, Sir? was you at the taking of it? Was you one of the party in that daring outrage?

Mr. Bourke. That is no matter; unless I am ordered by the Court to answer that question, I shall not.

(The Court informed Mr. Bourke, that he need not answer any question which might involve him in a criminal prosecution, but all other questions he must answer.)

Mr. Sherwood. Well, Sir, I do not ask you, if you helped to raze Fort Gibraltar; but did you hear any thing about its being razed by any persons?

Mr. Bourke. I decline answering that question.

Mr. Sherwood. Well, Sir, you shall answer it then in another way. Did you know if Michael Heden was at the taking of that fort? That is a question you must answer.

Mr. Bourke. I believe Michael Heden was at the taking of Fort Gibraltar. I saw a raft of materials come to Fort Douglas, some time afterwards, but I do not know that they were the materials of Fort Gibraltar. I have heard, and I believe, they were the materials of Fort Gibraltar. The Red River usually opens, or breaks up, about April; and it was about the latter end of May that I saw those materials, which I was informed, and believe, were those of Fort Gibraltar, but I do not know that they were. It being the latter end of May, it could not therefore be long before the battle. I saw Governor Semple go out to protect the settlers. I went out with him, and had a gun and some balls loose, but I had no cartridges. Some of the guns had bayonets to them; we did not go out to fight this party, though some of the guns had bayonets.

Mr. Sherwood. What could you want with bayonets to your guns, if you did not go to fight? Do you use bayonets in hunting? Is it usual to shoot buffalo with bayonets? How came you to take bayonets, if not to fight?

Mr. Bourke. I do not know how it was, but we did not go out to fight. We went out to protect the settlers, and get them to the fort. If they had been in the fort, we should not have gone out at all. We had long

expected the attack. Our apprehensions arose from information given us, and from repeated threats ; also from our having been fired on in 1815, when they drove us away.

Mr. Sherwood. Do you mean to say now, that your party did not fire first? I know you have said it before, but I ask you again?

Mr. Bourke. I do mean to say now, as I always have said, we did not fire first. When we met the settlers, who were running to the fort, and said they had carts and cannon, Mr. Semple sent me back to the fort for a small piece of ordnance which was there. It was from the settlers, and not from the sentinel, that we received information they were coming with cannon.

Mr. Sherwood. You have spoken of Mr. Holte, Sir; pray what sort of man was he? a mild man, not given to passion?

Mr. Bourke. I do not know that I have said any thing about him during my examination. I do not recollect that I have.

Mr. Sherwood. Well, Sir, if you do not decline (as you did about Fort Gibraltar) answering my question, we will speak of him. What countryman, in the first place, was Mr. Holte?

Mr. Bourke. Mr. Holte was a Norwegian, or a Swede, I believe. I never heard him say that he would destroy the North-West Company. (*A letter was produced, which the witness slightly examined.*) I cannot say whether this letter is in his hand-writing or not.

Mr. Sherwood. You had better, Sir, examine it more closely; perhaps, by its contents, you recollect the writing. I'll hand it you again to look at.

Mr. Bourke. I do not wish to see it. I do not know, from looking at it just now, whether it is his hand-writing or not. The half-breeds and North-West people drove away the settlers the day after, when they had them completely in their power. I heard that if Allan M'Donell had come, there would have been some killed, but none were killed, though wholly in the power of the half-breed party, after the 19th June.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General. Were your party on horseback?

Mr. Bourke. I was the only person belonging to our party who was on horseback at all, during the whole massacre, and I sent my horse back, when I went on to look for Governor Semple.

Attorney-General. Their party, then, being on horseback, and you on foot, could, I imagine, have avoided you, had they been so minded?

Mr. Bourke. Certainly, I should think they, being on horseback, might have avoided us if they had wished.

Attorney-General. Did they avoid you, or endeavour to do so?

Mr. Bourke. No; they came riding up to meet us; they gallopped up to us.

Mr. Sherwood. Yes; they might have avoided you, by leaving their carts with the provisions, and gallopping away?

Mr. Bourke. They need not have left their carts; they might have taken them with them.

Mr. Sherwood. Is it usual in that country to gallop loaded waggons through woods? I fancy not.

Mr. Bourke. There are no woods there to gallop through, it is an open plain for miles; and it is not likely we should have followed a party so strong as they were.

HUGH M'LEAN, *sworn.*

Examined by the ATTORNEY-GENERAL.

M'Lean.—In June 1816 I was at Fort Douglas; there were reports which led us to expect we should be attacked. The reports were, that the North-West people were coming to strike the colony and fort. This report came from Qui Appelle, by those who had been taken there with the pemican. M'Kay was one that came from there, and among them they brought the reports. On the 19th June 1816 I was at a short distance from the fort, and I saw a great number of persons coming down on horseback.

They had not passed the fort when I saw them first, but were about opposite to it, at a distance of perhaps a mile and a half; there appeared to be about fifty or sixty of them, and they had two or three carts with them, and were going towards Lord Selkirk's houses. They went at about a small trot, and were coming at that pace towards the woods which are between the fort and the Settlement. I then went to the fort, and Governor Semple, with the party who went with him, were out before I came. I saw them going along, but I did not join them; I went on to the fort. I had been about a quarter of an hour at the fort, when Mr. Bourke, who was one of the party who went with Governor Semple, came for a piece of cannon, and I went to drive the cart with the cannon. We went on for about a mile, and at about half a mile farther on, we saw them; they were mixed together, so that we could not distinguish one from another. Mr. Bourke observing this, sent me back with the cannon to the fort, which I reached with it safe. I saw Mr. Bourke afterwards, for after leaving the cannon I was returning to the same place, and then I saw him lying in a bush of wood wounded. Some men had advised him to go back, calling to him that the Governor wanted him, and then fired upon him. I then returned, and did not go any farther, as I found Governor Semple and others were dead. The half-breeds were close to us at this time, but I did not know Grant or any of them. When I first went to the fort, after seeing the men on horseback, I met Mr. Semple coming out with the party that went with him, but I did not speak to them. The Frog Plains are about three miles from Fort Douglas. I do not know if Mr. Semple or his party could have overtaken them, they were on a slow trot, but going faster certainly than people walk. Next day a large party of them came to the fort, they were armed, and about eighteen in number, and Grant was amongst them. I knew it to be Cuthbert Grant; I did not hear him say any thing about what took place the day before. I heard one Vickers say they fired first. I saw the carts come with nine dead bodies, and amongst them was the body of Governor

Simple; one of his arms and thighs were broken, and a musket-ball had gone in at his throat, and out of his head. The first time I saw Cuthbert Grant after the 19th June, I did not say any thing to him about the affair of that day. I had no conversation with him at all. I saw Boucher at the fort; he appeared to act under Grant's orders. As I was going along with the cart, I met some settlers coming to the fort, they appeared in a great fright, and were crying.

Cross-Examination, conducted by Mr. SHERWOOD.

M'Lean. I did not see Brown and Boucher the day after the battle. I do not know what was in the carts that the half-breed party had with them; I do not know whether it was pemican. Mr. Macdonell ordered me to go with Mr. Bourke with the cannon which was mounted, but we did not fire it; we had no orders to fire it, nor no ammunition. The half breeds took away some of the settlers' goods, but I did not hear, though they were wholly in their power, that any were killed after the 19th, nor do I think any were killed. They were all sent away in a day or two afterwards.

PATRICK CORCORAN, sworn.

Examined by the SOLICITOR-GENERAL.

Corcoran. In the spring of 1816 I was at Fort Douglas, and about the month of April, I was sent to Qui Appelle River; I went there with a party, and on our return, we were attacked and taken back to the North-West fort at Qui Appelle. I do not know if Boucher was there, but Cuthbert Grant, I think, was. It was a general talk at the fort, that they would go down and take Fort Douglas, and break up the Settlement. There were not many Indians, but a good many half-breeds, and they talked generally of the intended attack; some, whose names I do not recollect, told me of it particularly, and when I returned to Fort Douglas, I told it to our people. Peter Pangman, alias Bostonois; was there; he is a half-breed. Cuthbert Grant was there, for I heard him say, that he and others would come down and pay a visit to Mr. Robertson, and

he should see what they could do. I understood by their coming to visit Mr. Robertson, (and they did not scruple to say), that it was to attack him. I was there (at Fort Douglas), on the 19th June. It had been, and was, a common report, that we were to be attacked about that time. I was not in the battle; I was in the fort. I have nothing particular to say about what took place on the 19th June. Towards evening, I saw Mr. Semple and some of his people coming out of the fort as I was going in, but I did not see the half-breeds till next day. I saw some of the women from the Settlement come crying to the fort, saying the half-breeds were come. On the next day I saw a number of half-breeds enter the fort, and I believe that both the prisoners were amongst them, but I had no conversation with them, nor did I hear what passed between them and others of our people. I saw Governor Semple next day dead; at the time I saw his corpse, Cuthbert Grant was there.

Cross-Examination, conducted by Mr. SHERWOOD.

Corcoran. All I know about the battle, I have told. It was not two months before, that I was at Qui Appelle; it was in May that I was there. The fort on River Qui Appelle is about four hundred miles from Fort Douglas. I am a servant to the Hudson's Bay Company, and am now in my seventh year. I was not at Fort Gibraltar when it was taken, but I know that it was taken. I saw the materials of it at our fort; they were rafted down to it.

Mr. Sherwood. When Cuthbert Grant said at Qui Appelle, that he was going, or would go, and visit Mr. Robertson, did he not say what he was going for, that they were going to try and get their fort?

Corcoran. I did not hear him say what he was going for.

Mr. Sherwood. Did you not understand at the fort at Qui Appelle, that it was for that purpose they were going to visit Mr. Robertson, though Grant did not in your hearing say so?

Corcoran. I did not hear Grant say more than that he

would visit Mr. Robertson; and some of the half-breeds told me that they were going down to destroy the Settlement; indeed that was the general talk.

Mr. Sherwood. That you told us before, but I want you now to answer my questions. You have told your own story to the gentleman who examined you just now, and you answered all his questions very readily; now, though mine may not be so pleasant, yet you must answer them, and we want nothing else from you. Now I ask you again, when Grant spoke of going to visit Mr. Robertson, though he did not in your hearing say that it was about Fort Gibraltar that he was going, had you not good reason to believe that he meant he was going about that? Now, answer that question, just you had, or you had not, yes, or no?

Corcoran. When Grant said that he was going from River Qui Appelle to visit Mr. Robertson, I suppose he had some allusion to Fort Gibraltar.

Mr. Sherwood. Very well, why could you not have said so at first; you must answer my questions, however unwilling you may be.

Corcoran. I am not unwilling at all, I only want to speak the truth, and I cannot tell what he meant. It was the common talk that Fort Douglas was to be taken, and the Settlement broke up, but I don't know why.

Mr. Sherwood. But you know that Fort Gibraltar was taken, and razed to the ground by orders of your Governor, as you call him, by a party under the command of this Mr. Robertson?

Corcoran. No, I do not. I did not see it taken, I heard that it was taken, but I do not know by whose orders.

Mr. Sherwood. Do you not know that Mr. Semple sent Mr. Robertson to take Fort Gibraltar, and that Mr. Robertson went and took it?

Corcoran. I do not. I was not there, and do not know that Mr. Robertson went and took it, nor do I know any thing about any orders being given by any body to take it. I only heard that it was taken, and I saw some materials

at our fort, which they said were those of Fort Gibraltar. Mr. Robertson is in the service of the Hudson's Bay Company. I do not know if he was under Mr. Semple's orders. We always considered him as our head, and obeyed him; we were under his particular orders. When I went to River Qui Appelle, it was under his orders. Mr. Robertson, as well as Mr. Semple, was always willing that any merchants should pass and repass, if they did not molest him. I never heard that cannon were planted on the banks of the river opposite the fort, to prevent the North-West people from going up and down the river. When I was at the fort at Qui Appelle, I told them that they might pass and repass if they went quietly. I have heard that this party of half-breeds came to about a day's march from Fort Douglas in canoes and boats: There were cannon at Fort Douglas, and they were mounted on bits of carriages, but there were none on the other side of the river. I know nothing of two trains of pemican being taken from the North-West fort near Brandon House. I know some was taken, and carried to Fort Douglas. I know there was a good parcel, but I do not know how much. I do not know if there were five or six hundred bags. There was enough to last some hundred people some time; there was a good quantity.

PIERRE CHRISOLOGUE PAMBRUN, *sworn*.

Examined by the ATTORNEY-GENERAL.

Mr. Pambrun. I had been for some time under the orders of Mr. Semple, and on the 12th April, 1816, I left Fort Douglas under his directions, to go to the Hudson's Bay Company's house, on River Qui Appelle. I set out with as much provision as would last us six days, when we would get to Brandon House, where, according to my instructions, I was to go first, and from thence, if prudent, to the Hudson's Bay post (where I afterwards did go), at Qui Appelle. On the 1st of May I left Qui Appelle, with five boat-loads of pemican and furs. As we were going

down the river, on the 5th May, near the Grand Rapids, I made the shore in a boat, and a party of armed half-breeds immediately came and surrounded me, and forced me to give up the boats, and the furs, and pemican. The pemican was landed, and the boats taken across the river. I was kept a prisoner for five days. Cuthbert Grant, Peter Pangman, Thomas M'Kay, were of the party who made me a prisoner. Boucher was not, and I do not know whether Paul Brown was or was not. I was taken back to River Qui Appelle, to the North-West Company's post, and there I saw the prisoner, Paul Brown, but not Boucher. I was kept there five days. Mr. Alexander Macdonell was in command at this station, and I asked him why I had been made a prisoner, or by whose orders I had been arrested, and he said it was by his own. There were about forty or fifty half-breeds at this fort. Cuthbert Grant frequently said they were going to destroy the Settlement, and I was told Mr. Macdonell said, the business of the year before was a trifle to what this should be. Cuthbert Grant frequently talked with the half-breeds about going, and they sung war-songs, as if they were going to battle. On the 12th I left Qui Appelle. We drifted down to the place where I had before been stopped, and the pemican, which had been landed from our boats, was re-embarked by the North-West people. When we got to the Forks of the River Qui Appelle, we encamped. The people who were taken with me had been liberated some time before, and had gone away, but I had been kept a prisoner. The next morning after we had encamped, that is, the people in the two boats which went with Mr. Macdonell, a number of Indians, who were in camp at some distance, were sent for, and they came, and went into Mr. Macdonell's tent, who made a speech to them; a party went also on horseback from Fort Qui Appelle armed, but I was in one of the boats with Mr. Macdonell. In going down the river, they talked freely of breaking up the Settlement, and taking Fort Douglas, and the people frequently told me that Mr. Macdonell had said, the business of the year before had been nothing to what this would be. Mr. Macdonell's

speech to the Indians was to this effect: "My friends and relations, I address you bashfully, for I have not a pipe of tobacco to give you. All our goods have been taken by the English, but we are now upon a party to drive them away. Those people have been spoiling your lands, which belong to you and the half-breeds, and to which they have no right. They have been driving away the buffalo, and that they (the Indians) would soon be poor and miserable, if they (the English) staid; but that they (this party) would drive them away if the Indians did not, for that the North-West and the half-breeds were one; that if he and some of his young men would join——"

Chief-Justice. If who would join with his young men?

Mr. Pambrun. A Chief who was present, belonging to the Saulteux tribe. He said, that if "some of the young men would join, he should be glad." Pangman and one Primeau acted as interpreters. Mr. Macdonell spoke in French. The Chief said, "that he knew nothing about it, and should not go himself; if some of the young men went, it was nothing to him," Mr. Macdonell then said, "well, it is no matter, we are determined to drive them away, and if they make any resistance, your lands shall be drenched with their blood." This harangue was made on the 13th or 14th of May, and was delivered by Mr. Macdonell in French. I know that the prisoner Paul Brown was of the party. The next morning the Indians went away, and the party drifted down the Ossiniboine River to the Grand Rapids. From there, about thirty started, among whom were Mr. Macdonell, Cuthbert Grant, and a number of half-breeds. I did not see Seraphim Lamarre among them. I was left behind and still a prisoner, but in the evening a spare horse was brought by Mr. Fraser and one Taupier for me, and I accompanied them on horseback to the North-West fort, near Brandon House. When I approached, I saw a crowd assembled about the gate. I suppose there were from forty to fifty persons assembled. Their arms were down by the gate, and as I entered it, a number of them presented their guns

at me, making use of insulting language. I complained to Mr. Macdonell of this treatment, and asked him if it was by his orders, and he said he would speak to them about it, but I do not think he ever did. In the course of the night I saw some property that was brought away from our fort at Brandon House. I saw tobacco and carpenters' tools, and other things. I wished very much to go over to see a Mr. Peter Fidler, who had charge at Brandon House. I found that he was not at the fort, but having been turned out, was encamped in a tent completely without the fort. Besides tobacco, carpenters' tools, &c. there were some furs also brought from Brandon House. The tobacco which had been brought was divided the next day amongst these men, the half-breeds. About the 24th or 25th May, the party was separated into smaller divisions, and chiefs appointed. The property was embarked, and the whole set off to go to Portage des Prairies; a part went by water, but the half-breeds generally went by land, on horseback. Having arrived at Portage des Prairies, the whole of the pemican and packs were landed, and formed into a sort of breastwork or fortification, having two small brass swivels there, which the year before had been taken from the stores of the Settlement. On the morning of the 17th June, being at Portage des Prairies still, which is about sixty miles from the Settlement, the half-breeds mounted their horses, and set off for it; they were armed with guns, pistols, lances, and bows and arrows. Cuthbert Grant was with them, Antoine Hoole, Thomas M'Kay, the prisoner Brown, and I also saw Boucher. I remained behind; so did Mr. Alexander Macdonell, Allan Macdonell, John Siveright, Seraphim Lamiarre, and I also saw Fraser there, and about thirty to forty men staid to help to guard the pemican. The object of this expedition was to take Fort Douglas, and break up the Settlement. If the settlers took to the fort for protection, then the whole were to be starved out. The fort was to be watched strictly at all times; and if any of them went out to fish, or to get water, they were to be shot, if they could not be taken prisoners. I certainly had, from

all I heard, very serious apprehensions for my friends. I do not remember that Cuthbert Grant said any thing particular on the morning he went away. On the 20th, a messenger arrived from Cuthbert Grant. When Mr. Macdonell saw him approach, he went out and spoke with him, and presently gave three cheers. Upon this the other gentlemen asked what was the news. Mr. Macdonell said, in French, it was good; twenty-two English are killed, and among them Temple and five of his officers. He then announced it to the people, and said in French, "*Sacré nom de Dieu, bonnes nouvelles, vingt-deux Anglois de tués.*" The gentlemen present all shouted with joy, especially Lamarre, Macdonell, and Siveright. Pangman, commonly called Bostonois, inquired whether there were any killed upon their side? it was answered, that one had been, and on hearing who it was, he said it was his cousin, and then exclaimed, "My cousin is killed, and I will be revenged; the affair shall not end here, they shall all be killed, for so long as these English are let go out of the river, they always will be coming back, as they had done last year;" and he also said, that "there should not be one of them allowed to go out of the river, for so long as they were permitted to go out, they would always cause a disturbance and mischief." Upon this, two men, named Latour and Montour, were ordered to get horses, and immediately dispatched on horseback to the Red River, with directions to detain all the settlers till Alexander Macdonell should arrive. We then pursued our journey by land towards the fort, to within about thirty miles of it, and the remainder of the way I went by water. When I arrived at Fort Douglas, I found all our people were gone. I met none of them there at all; the fort and property were in the possession of the half-breeds, the same half-breeds as I had before seen start for Fort Douglas. Grant was there, and a number of those I have before mentioned; they were in fact the party who had gone down on horseback with the carts from Portage des Prairies. Brown and Boucher, the two prisoners at the bar, were there; they were altogether about forty-five

in the fort, and not at the Settlement. Mr. Macdonell had arrived fifteen-hours before me. The day after, I asked Mr. Macdonell to let me go to the spot where the accident had occurred, which he did, and I went by myself.

Attorney-General. Were Mr. M'Kenzie and Mr M'Leod at Fort Douglas at this time?

Mr. Pambrun. No, they did not arrive till the 24th of June. I heard Cuthbert Grant, Antoine Hoole, and others, speak together of what they had done; they spoke it among themselves, boasting of it; one said that he had killed one, and some that they had killed two, and so on, but they generally boasted of their feats. I heard Cuthbert Grant say, that he had fired upon Mr. Semple, and upon M'Lean. The general account of the half-breeds was, that Grant was a brave man, and had conducted himself well in the engagement. They did not seem to be sorry for, or hide what they had done.

Attorney-General. Did you see the place where any of these persons were buried?

Mr. Pambrun. Yes, I did; the limbs of the persons who had been killed, were out of the ground, and many of their bodies in a mangled condition. I was afterwards sent to Fort William; I was not there considered as a prisoner; I was allowed to go in three or four days.

Chief-Justice. Before he goes any farther, will you let him relate the names of those whom he found at Fort Douglas, upon his arrival there? I mean those whom he saw start from Portage des Prairies.

Mr. Pambrun. There were of the half-breeds, Cuthbert Grant, Antoine Hoole, Thomas M'Kay, Louis Lacerte, Alexander Fraser, François Deschamps, La Grosse Tête, Andié Traquer, Alexander Tookey, Tookey his brother, Moustouche, Marcellet, and several I do not recollect; of Canadians there were François Deschamps the elder, who went by water, Boucher, Lavigne, and Louis Morain. Boucher went down to Fort William in the same canoe that I did. He freely admitted that he had been in the battle. He told me that he had acted *comme ambassadeur*, and was the first man who had spoke to

Governor Semple. In the canoes that went with us to Fort William, were the furs which had been taken from me when I was taken to the North-West post on the River Qui Appelle.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Pambrun. The Bois-brulés are the bastard children, either of French or English fathers, by Indian women; they are the offspring of white men by Indian women; some of them I know have been sent to Lower Canada, and received their education at Montreal and Quebec. I do not think they consider themselves as white men; or that they are so considered by white men, nor do they consider themselves as only on a footing with the Indians; they are employed in all capacities, as clerks, interpreters, and engagés. I know that Assiniboin, a half-breed, was one who went down on horseback. I know a person named Hamelin who was there, but I do not know that they are now in the service of the Hudson's Bay Company. They call the people engaged in the service of the Hudson's Bay Company, the English, and they call me an Englishman, but I am a Canadian; they call me so from opposition to the English settlers. Mr. Alexander Macdonell is one of the partners of the North West Company, as I have always understood. I never took Bostonois Pangman prisoner, but he was taken by some of the Hudson's Bay people before I was taken. I do know that Fort Gibraltar was once in possession of the North-West Company. As I was going to Fort des Prairies, I saw it in their possession, and in going up again, I saw it in possession of the Hudson's Bay people. The fort was taken, but not taken away, for I found some of the Hudson's Bay people there. I do not know that the Hudson's Bay people have an exclusive right to that country, and to erect trading posts therein. I knew the late Governor Semple and his hand-writing; this letter of the 23rd March, addressed to Alexander Macdonell, and this of the 14th May, also addressed to him, are Mr. Semple's hand-writing.

Mr. Sherwood. I move they be read.

The two following letters were then read.

A. M'DONELL, Esquire,
Qui Appelle.

Brandon, 23d March, 1816.

SIR,

I enclose to you a letter from Mr. Robertson, which I have perused, and which happily requires no comment. I suspect that your associates have mistaken my character. Remember what I now say to you: Should you, or your Indian, or black breed allies, attempt any violence against the Hudson's Bay Company at Qui Appelle or elsewhere, the consequences to yourselves will be terrible.

I am, Sir,

Yours, &c.

(Signed)

ROBERT SEMPLE.

A. M'DONELL, Esquire,

Fort Douglas, 14th May, 1816.

SIR,

I take the opportunity of Mr. Seraphim Lamarre's return towards Qui Appelle, to acknowledge receipt of your letter of the 5th instant.

The idea of Mr. Robertson making a journey of 120 miles, for the purpose of a conversation with you, appears to me wholly inadmissible, when the same purpose may be just as effectually answered at the first point, or at either of the Forks. Still less can I think of delegating full powers to any man to form definitive arrangements, when I myself am on the spot, and must alone be answerable for them, both to friends and enemies.

In the mean time, my wish for general tranquillity will ever remain unchanged. I am satisfied with the proofs which remain in our hands, and seek no more. Should you be unwilling to meet me here, I leave it to yourself to appoint a spot at a moderate distance from the Forks for a conference. Whatever place you may adopt, I repeat, that your person and property shall be considered sacred, unless you commence acts of hostility. Should you, however, have occasion again to write to me, it will be perfectly unnecessary to talk of your means of retaliation. I also, should I be compelled to it, have my schemes

of farther and still farther retaliation, the shock of which, if I mistake not, should be felt from Athabasca to Montreal*.

I am, Sir,

Yours, &c.

(Signed)

ROBERT SEMPLE.

Mr. Pambrun. I do not know where Athabasca is. I have been informed that it is far north, and that trade is carried on there by both Companies. It is far north, I believe of Red River. The party that went down to Red River set off to go, a part by land, and a part by water, and each party had pemican with them; those that went by land took it in carts, and those that went by water, took it in canoes. Portage des Prairies is about sixty miles from Fort Douglas. I do not consider that it would have been unsafe for this party to have gone by water, and have passed Fort Douglas, if they had not committed depredations.

Mr. Sherwood. Do you not know, Sir, that they had been robbed before; if not by you, do you not know that their pemican had been taken from them by some of your people?

Mr. Pambrun. I was never the robber of the North-West Company, nor do I know that they were robbed. I know that they robbed me.

Mr. Sherwood. Did they not, at that very time, tell you, that what they did to you, was in retaliation for similar conduct on the part of Colin Robertson to them? Don't be angry; I did not charge you with being a robber.

* It is probable, that Governor Semple here alluded to the effect which he expected to result from a disclosure of the diabolical principles, and sanguinary designs of the North-West Company, as declared in the letters intercepted by Mr. Robertson, which Mr. Semple had determined to communicate to His Majesty's Government, and to Parliament, and of which Cuthbert Grant's letter, produced on the examination of Mr. Pritchard, at Page 89, is one. The contents of some others may be seen in the Statement respecting Lord Selkirk's Settlement, published by Murray, Albemarle Street, in 1817, page 71 to 74.

Mr. Pambrun. Alexander Macdonell told me, when I asked by whose authority I was taken, that it was by his, and that it was in retaliation for what Colin Robertson had done that I was robbed, and that he would starve the colonists and the Hudson's Bay Company's servants, and force them to surrender.

Mr. Sherwood. Do you think that the Hudson's Bay Company would have done the same, if such a daring outrage had been committed on them, as these people had perpetrated at Fort Gibraltar? If Fort Douglas had been razed to the ground, all the property of my Lord Selkirk and the Company sent away, do you not think they would retaliate in the same way?

Mr. Pambrun. No, I do not; for it never was their disposition to kill any body.

Mr. Sherwood. Indeed! did you never hear of any body being killed by them in affrays that have taken place?

Mr. Pambrun. No, I have not; nor do I believe they would.

Mr. Sherwood. May I ask you, Sir, on what you found your opinion of their humanity?

Mr. Pambrun. I found my opinion on this, that if they had wished to kill, they might; but they never have, and that is why I believe they never will.

Mr. Sherwood. That is your opinion. I happen to have a different one, and so have many other people. Have you any other reason, Sir, than because you do not happen to know of their taking the life—

Chief-Justice. What has this to do with the case before us? Either examine the witness to the case, or be silent.

Mr. Sherwood. Whenever your Lordship pleases, it is my duty to bow, and I certainly shall; but if permitted to pursue my own course, I shall put that question to Mr. Pambrun.

Chief-Justice. Well, then, silence now.

Mr. Sherwood sat down.

Mr. Sherwood (rising). Does your Lordship prohibit my cross-examining this witness farther?

Chief-Justice. I have no wish to stop your cross-examination, if you conduct it regularly; none at all.

Mr. Sherwood. What did you say to Mr. Macdonell, upon first seeing him at the fort at Qui Appelle River? Tell what passed at that time, the whole that passed.

Mr. Pambrun. I asked him by whose authority Cuthbert Grant had taken me prisoner, and took my property, or the property I was in charge of, from me, and he said it was by his orders, and that it was done by way of retaliation for Fort Gibraltar having been taken by Mr. Robertson, and that he would make the settlers and servants of the Company surrender, or he would starve them out: this is all I recollect to have passed.

Mr. Sherwood. What, Sir, did Cuthbert Grant say to you relative to his own share in the affair of the 19th June? You have told us that the general report was, that he was a brave man, and conducted himself well on that day, and you also told us of something that he himself said; tell us that again, will you?

Mr. Pambrun. Mr. Grant told me that he had fired upon Mr. Semple, and had shot him. It was not in confidence that he said this to me; it was in a general conversation. He said that he had shot Mr. Semplé, and had fired on Mr. M'Lean. I never received any orders from Mr. Semple, or Mr. Robertson, to molest or interfere with the North-West Company's people, but, on the contrary, our orders at all times were to do them no violence, and not to interfere with them at all.

Mr. Sherwood. It is a great pity they were not more generally obeyed by his servants, if those were his orders.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General. What were your orders, Sir, (for I believe you received particular ones,) from Mr. Semple, when you started from Fort Douglas to go to Brandon House, and thence, according to information you might obtain there, to the Hudson's Bay post on River Qui Appelle?

Mr. Pambrun. I went under orders from Governor Semple to be peaceable, and to avoid every thing like hostility, unless I was attacked. My instructions were contained in a letter in these words: "Mr. Pambrun. Sir, "Having" (*Mr. Pambrun's repeating the letter was objected to by Mr. Sherwood, and Mr. Pambrun was directed by the Court not to repeat it.*) That was the general nature of my instructions; I was to go to Brandon House, and thence to Qui Appelle, peaceably, if they would let me go, and I went peaceably, till I was stopped and robbed of the property.

Attorney-General. I will not ask you, Sir, whether you know of the Hudson's Bay Company ever having taken the lives of one and twenty persons at one time; but I will ask you, Sir, do you know, or did you ever hear, of a single life having been taken by them?

Mr. Pambrun. I do not know of any life having been taken, nor did I ever hear of any one losing his life by them.

Mr. Sherwood. I must ask you, Sir, before this unhappy affair, (in which we are now endeavouring to see who are the murderers, or who are to blame,) do you know of the North-West Company having taken the lives of one and twenty, or of one person? Do you, before this time, know of any case?

Mr. Pambrun. I know of none before this, on the part of the North-West Company. I have been told that there—

Mr. Sherwood. We do not want what you was told. I have been told very different to what you have been, but that is of no consequence here.

FREDERICK DAMIEN HUERTER, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Huerter. I was not present at Fort Douglas on the 19th June, in the year 1816. I came there about eight days after with a partner of the North-West Company, a Mr. Archibald Norman M'Leod, and we found it in pos-

session of Mr. Alexander Macdonell, and some half-breeds. Mr. Alexander Macdonell is a partner also in the North-West Company. I was at that time in their service as a clerk. Cuthbert Grant was there, and I also saw François Firmin Boucher, one of the prisoners there. I heard of what had passed on the 19th June, and I visited the field of battle, in company with the persons who were there. Cuthbert Grant, Alexander Fraser, Deschamps the father, and two sons, Joseph, called Grosse Tête, were of the party who went, and Joseph Deschamps related the particulars of how they shot the people. The observations were not made to me, but to some of the partners of the North-West Company who went with us. He related particularly how they shot the people who *were* [came] with Mr. Semple. I did not hear Cuthbert Grant say any thing, it was young Deschamps that I heard relate the particulars. I was present when the speech was made to the half-breeds by a partner of the North-West Company, Mr. Archibald Norman McLeod; but I do not know that any thing was answered by Grant, or by Boucher.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Huerter. I am not in the service of the Hudson's Bay Company, nor of the Earl of Selkirk, nor have I been.

JOHN PRITCHARD, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Pritchard. In May 1816, I was living at Red River, and in that month and long before, from the Indians and free men who lived in our neighbourhood, I heard of its being intended to attack us. I heard this as early as March, and in May and June the report became general. In consequence of this information, we were constantly upon the look-out; day and night, a watch was kept for the express purpose of giving the earliest notice of their approach. On the evening of the 19th June, I had been up stairs in my own room, and about six o'clock, I heard the boy at the watch-house give the alarm that the half-

breeds were coming. A few of us, among whom was the Governor, there were perhaps six altogether, looked through a spy-glass, from a place that had been used as a stable, and we distinctly saw some armed persons going along the Plains. Shortly after, I heard the same boy call out, "that the party on horseback were *making* [*marching*]" "to the settlers." About twenty of us, in obedience to the Governor, who said, "we must go and see what these people are," took our arms. He would only let about twenty go, at least he told about twenty to follow him—to come with him; there was, however, some confusion at the time, and I believe a few more than twenty accompanied us. Having proceeded about half a mile towards the Settlement, we saw, behind a point of wood which goes down to the river, that the party increased very much. Mr. Semple, therefore, sent one of the people (Mr. Bourke) to the fort, for a piece of cannon, and as many men as Mr. Macdonell could spare. Mr. Bourke, however, not returning soon, Mr. Semple said, "Gentlemen, we had better go on," and we accordingly proceeded. We had not gone far before *we saw* the half-breeds returning towards us, and they divided into two parties, and surrounded us in the shape of a half-moon or half-circle.

Attorney-General. Did you meet any people in your way?

Mr. Pritchard. Yes, we met a number of the settlers, crying and speaking in the Gaelic language, which I do not understand, and they went on to the fort. The party on horseback had got pretty near to us, so that we could discover that they were painted and disguised in the most hideous manner; upon this, as we were retreating, Boucher advanced, waving his hand, riding up to us, and calling out in broken English, "What do you want, what do you want?" Governor Semple said, "What do you want?" Mr. Bourke not coming on with the cannon as soon as he was expected, Mr. Semple directed the party to proceed onwards; we had not gone far before we saw the half-breeds returning upon us. Upon observ-

ing that they were so numerous, we had extended our line, and got more into the open plain; as they advanced we retreated; but they divided themselves into two parties, and surrounded us in the shape of a half-moon. Boucher then came out of the rank of his party, and advanced towards us, (he was on horseback,) calling out in broken English, "What do you want? what do you want?" Mr. Semple answered, "What do *you* want? to which Boucher replied, "We want our fort." Governor Semple said, "Well, go to your fort." After that I did not hear any thing that passed, as they were close together. I saw Mr. Semple put his hand on Boucher's gun. Expecting an attack to be made instantly, I had not been looking at Governor Semple and Boucher for some time; but just then I happened to turn my head that way, and immediately I heard a shot, and directly after, a general firing. I turned round upon hearing the shot, and saw Mr. Holte struggling as if he was shot. He was on the ground. On seeing their approach, we had extended our line on the open plains; this was done by Mr. Semple's, or some other person's directions. By extending our line, I mean we each took a place at a greater distance from each other; we took places as best suited our individual safety. From not seeing the firing begin, I cannot say from whom it first came, but immediately upon hearing the first shot, I turned round and saw Lieutenant Holte struggling. A fire was kept up for several minutes and I saw several wounded; indeed, in a few minutes almost all our people were either killed or wounded. I saw Sinclair and Bruin* [Bruce,] fall, either wounded or killed, and Mr. M'Lean, a little in front, defending himself, but by a second shot I saw him fall. At this time I saw Captain Rogers getting up again, but not observing any of our people standing, I called out to him, "Rogers, for God's sake give yourself up, give yourself up." Captain Rogers ran towards them, calling out, *in English and in broken French,*

* Bruin is the right name.

that he surrendered, and that he gave himself up, and praying them to save his life. Thomas M'Kay, a half-breed, shot him through the head, and another half-breed ripped his belly open with a knife, using the most horrid imprecations to him. I did not see Mr. Semple fall. I saw his corpse the next day at the fort. When I saw Mr. Rogers fall, I expected to share his fate. As there was a Canadian among those who surrounded me, and who had just made an end of my friend, I said, "Lavigne, you are a Frenchman, you are a man, you are a Christian, for God's sake, save my life, for God's sake, try and save it. I give myself up. I am your prisoner." M'Kay, who was among this party, and who knew me, said, "you little toad, what do you do here?" He spoke in French, and called me, *un petit crapaud*, and asked what I did here? and I fully expected then that I should lose my life. I again appealed to Lavigne, and he joined in entreating them to spare me. I told them over and over that I was their prisoner, that I had got something to tell them: they, however, seemed determined to take my life. They struck at me with their guns, and Lavigne caught some of the blows, and joined me in entreating for my safety. He told them of my kindness on different occasions. I remonstrated that I had thrown down my arms, and was their prisoner, at their mercy. One Primeau wished to shoot me; he said I had formerly killed his brother; I begged him to recollect my former kindness to him at *Qui Appelle*. At length they spared me, telling me, I was a little dog, and that I had not long to live, that he would find me when he came back. I then went to Frog Plains in charge of Boucher. I do not know of any conversation taking place on the way between us. In going to the plains, I was again threatened by one of the party, and saved by Boucher, who conducted me safe to the Frog Plains. I there *saw* [*met*] Cuthbert Grant, who told me that they did not expect to have met us on the plain, but that their intention was to have surprised the colony, and that they would have hunted the colonists like buffalo. He also told me they expected to have got round unper-

ceived, and at night would have surrounded the fort, and have shot every one who left it; but being seen, their scheme had been destroyed or frustrated. Paul Brown appeared to be one of this party: I do not think he was armed. They were all painted and disfigured, so that I did not know many. I should not have known that Cuthbert Grant was there, though I knew him well, had he not spoken to me. Grant told me that Mr. Semple was not mortally wounded by the shot he received, but that his thigh was broke. He said that he spoke to Mr. Semple after he was wounded; that Mr. Semple asked him to get him taken to the fort, and as he was not mortally wounded, he thought he perhaps might live. Grant said that he could not take him himself, as he had something else to do, but that he would send some person to convey him there on whom he might depend, and that he left him in the care of a Canadian, and went away; but that almost directly after he had left him, an Indian, who, he said, was the only rascal they had, came up and shot him in the breast, and killed him upon the spot.

Attorney-General. Is it usual for the half-breeds to paint themselves?

Mr. Pritchard. Very far from it, it is very unusual; they are accustomed to dress like Canadians. I have lived thirteen years in the Indian country, and I never saw the half-breeds paint; they imitate the white people, and dress like them at all times, except when engaged in sporting as Indians. They were painted as I have been accustomed to see the Indians at their war dance; they were very much painted, and disguised in a hideous manner. They gave the war-whoop when they met Governor Semple and his party, as I was told; they made a hideous noise and shouting. I know from Grant, as well as from other half-breeds and the settlers, that some of the colonists had been taken prisoners. Grant told me that they were taken to weaken the colony, and prevent its being known that they were there, they having supposed they had passed the fort unobserved. Their intention clearly was, to pass the fort. I saw no carts, though I heard they had carts with them.

I saw about five of the settlers prisoners in the camp at Frog Plains. Grant told me they intended to have encamped below the Plains, and have prevented the settlers going to the river for water, or if they did go, to have shot them. He also said to me, in the same conversation, "You see we have had but one of our people killed, and "how little quarter we have given you; now, if that fort "is not given up, with all the public property instantly, "without resistance, man, woman, and child shall be put "to death." He said the attack would be made upon it that night, and, if a single shot were fired, that would be the signal for the indiscriminate destruction of every soul, man, woman, and child. I was completely satisfied myself that the whole would be destroyed, and I besought Grant, whom I knew, to suggest, or let them try and devise, some means to save the women and children. I represented to him, that they could have done no harm to any body, whatever he or his party might think the men had. I entreated them to take compassion on them. I reminded him that they were his father's country-women, and in his deceased father's name, I begged him to take pity and compassion upon them, *and spare them.*

Attorney-General. Before you proceed with that part of the melancholy history, I wish to ask you, Mr. Pritchard, whether there was any proposition on your side, or any disposition in your party, to attack the half-breeds, or when they were coming up to you, was there any disposition to fire, or any proposal that you should fire upon them?

Mr. Pritchard. At the time the half-breeds divided into two parties, just before surrounding us, one of our people, Bruin I believe, did propose that we should keep them off, and Mr. Semple turned round, and asked them who could be such a rascal as to make such a proposition, and not to let him hear such a word again. Mr. Semple was very much displeased indeed. I begged Cuthbert Grant, in his deceased father's name, to have compassion on the helpless women and children, and spare them, whatever they might do with the men. I tried to soften down things with him, and succeeded at last so far with

him, that he said, if all the arms and public property were given up, we should be allowed to go away; and he would give us an escort to protect us against other parties that were expected. I said they were hard terms that we must all go away, but he said they were the only terms that he could grant. I then wished to go to Mr. Macdonell at the fort with this proposition, for I was afraid lest they should retract: but another difficulty presented itself; the half-breeds were unwilling that I should be permitted to go, lest I should remain at the fort. I spoke to them, and endeavoured to persuade them to acquiesce, but I did not seem likely to succeed; at last I appealed to Cuthbert Grant: "Mr. Grant, you know me, " you know I will return; if I say I will, I will return, " and I am sure you will answer for me that I will:" to this he agreed, and I went to the fort, Grant accompanying me a good part of the way as a protector, it being late at night. Arrived at the fort, I communicated to Mr. Macdonell the terms upon which they had agreed to let us depart, and that they must be complied with by morning, when I was to return, according to the agreement I had made with Grant. First, the settlers were assembled at the fort, and when the proposal was made to them, they said they would not accept them, and would not surrender on such terms. Mr. Macdonell, therefore, though convinced in his own mind that resistance would be fruitless; said that he could not accept them; that he could not give up the *post* [fort] if the people were determined to defend it. In the morning, however, they concluded that it would be better to comply with the terms than risk more blood being shed. I accordingly went to Frog Plains, and after some time, an agreement was made between Mr. Macdonell and the half-breeds, upon the terms I have stated, and an inventory of it being taken, it [the fort] was delivered over to Cuthbert Grant, who gave receipts on each sheet of the inventory, signed Cuthbert Grant, clerk for the North-West Company, acting for the North-West Company. I remained at Fort Douglas till the evening of the twenty-second, when we proceeded down the river, on

our way to Hudson's Bay. On the following day, or the twenty-fourth, I am not quite certain which, we met a number of canoes, in which were Mr. Archibald Norman M'Leod, and a number of partners of the North-West Company, perhaps eight or ten.

Attorney-General. Were either of the prisoners with you then?

Mr. Pritchard. No; Boucher had gone with us no farther than the Forks. At the time of the capitulation, Grant had promised us an escort to protect us against two other parties of half-breeds, whom he said we should meet, the one headed by William Shaw, and the other by Simon M'Gillivray. I had thought Boucher was to go with us. I argued with Grant upon the danger we should be again exposed to, but it was no use; we went without an escort. After meeting with Mr. M'Leod we were ordered ashore, and I was sent to Fort William with some others. I did not see Brown at the time of the horrid affair on the Plains. I saw him the day after, at Fort Douglas; he came with the party; they were, I believe, all armed, and I did not see Brown afterwards. I know Cuthbert Grant very well, and his hand-writing, having frequently seen him write. (*A letter being here produced.*) This letter is in Cuthbert Grant's hand-writing.

The following letter was then read, upon motion of the Attorney-General.

River Qui Appelle, 13th March, 1816.

MY DEAR SIR,

I received your generous and kind letter last fall by the last canoe. I should certainly be an ungrateful being, should I not return you my sincerest thanks. Although a very bad hand at writing letters, I trust to your generosity. I am yet safe and sound, thank God, for I believe it is more than Robertson or any of his suite dare to offer the least insult to any of the Bois-brulés, although Robertson made use of some expressions which I hope he shall swallow in the spring; he shall see that it is neither fifteen, thirty, nor fifty, of his best horsemen that can make

the Bois-brulés bow down to him. The half-breeds of Fort des Prairies and English River, are all to be here in the spring; it is hoped we shall come off with flying colours, and never to see any of them again in the colonizing way in Red River; in fact, the traders shall pack off with themselves also, for having disobeyed our orders last spring, according to our arrangements. We are all to remain at the Forks to pass the summer, for fear they should play us the same trick as last summer, of coming back; but they shall receive a warm reception. I am loth to enter into any particulars, as I am well assured that you will receive a more satisfactory information (than I have had,) from your other correspondents; therefore I shall not pretend to give you any; at the same time begging you will excuse my short letter. I shall conclude, wishing you health and happiness.

I shall ever remain,

My dear Sir,

Your most obedient humble servant,

(Signed)

CUTHBERT GRANT.

My sister and Betsy return their most respectful compliments to you.

J. D. CAMERSON, Esquire.

Attorney-General. At the time, Sir, that these half-breeds came, what were the ordinary pursuits of the Settlement and the various persons employed at the fort?

Mr. Pritchard. The settlers were generally employed in agricultural pursuits, in attending to their farms; the servants of the Hudson's Bay Company in their ordinary avocations. They lived in tents generally and huts. In 1816, at Red River there was but one house, the Governor's, which had been called Fort Douglas by the settlers after their return to the Settlement in 1815. There were houses before that time, but they were burned down in the attack that was then made on the colony. The settlers were employed during the day-time on their lands, and used to come up to the fort to sleep. The Red River runs into Lake Winnipic, and the Settlement is at the Forks, which are formed by the junction of the great Red River with the lesser one, or the River Ossini-

boine. Fort Douglas is about eighty miles from Lake Winnipic, and it must be, I think, in a south-west course; I think that must be its bearing.

Attorney-General. Will you now, Sir, tell us whom you saw at this lamentable battle that you knew personally, and whom you saw fire?

Mr. Pritchard. I saw the two M'Kays, Hoole, and Cuthbert Grant, but I cannot say positively whom I saw fire, except Thomas M'Kay, whom I saw kill Captain Rogers; I cannot speak to any one else. I saw Boucher afterwards at Fort William, and I inquired of him what passed between him and Governor Semple after the questions and answers about the fort; and he said that he told the Governor, that unless they laid down their arms and surrendered themselves prisoners, they were all dead men. The party of half-breeds came out of their way. I think, if they had not had hostile designs against the Settlement, had they wanted to carry provisions to meet canoes, they need not have gone to the Settlement; they could have passed by it. At Frog Plains I saw some carts empty. Cuthbert Grant had promised us provisions for the voyage to the Hudson's Bay coast, and when I spoke to him about it, he said he could not let us have more than he had given us, as it was all at the forts above; but if we would wait till he sent to Bas de la Rivière, which would take about a fortnight, we should have it; we were, however, glad to get away at any rate, and therefore went with the little we had.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. If I understand you, Mr. Pritchard, you have distinctly said that you do not know which party fired first?

Mr. Pritchard. I have said so. I cannot say who did. I think Mr. Holte must have fallen by the first shot, because I turned round instantly, and saw him struggling on the ground. I have a knowledge of Mr. Miles Macdonell's Proclamation, but I do not know of ~~two~~ sleigh-loads of pemican being taken under it. Of ~~some~~ boat-loads being

taken I do know, from having received a letter informing me of it.

Mr. Sherwood. Before we go into that, I will ask you, Sir, in what capacity you was at the battle of the 19th June?

Mr. Pritchard. I was there in the capacity of a settler at Red River.

Mr. Sherwood. You was not in the service of the Hudson's Bay Company?

Mr. Pritchard. I was not; I was a settler on Red River.

Mr. Sherwood. You was not then, nor are now, in the pay of that Company?

Mr. Pritchard. I was not; I am not, nor have I ever been, in the pay of the Hudson's Bay Company.

Mr. Sherwood. I will now ask you, Sir, do you know of any pemican ever having been taken under this famous Proclamation of Mr. Miles Macdonell, and where, and how much?

Mr. Pritchard. Yes, I do; a quantity was taken from under my care at the post on the River la Sourie, or Mouse River. Four persons, I believe, came to Brandon House; but in the first instance, Mr. Spencer came, and wanted entrance into the fort; I asked in what quality he came, and he said, as a private gentleman, and I admitted him. He stated he came to me on the subject of Governor Macdonell's Proclamation prohibiting the exportation of pemican, and that he had orders to detain it. After some conversation, I made a proposition, which Mr. Spencer sent down to Captain Macdonell. A few days after Mr. Spencer and some people came and demanded entrance in the King's name, to search for provisions which were intended to evade the Proclamation. I wrote an answer to this demand, and put it through the pickets to Mr. Spencer. He looked at it, and said it would not satisfy him. I did not choose to open the gates, and I said that he must use force if he wanted to come in. Accordingly they set to work, and cut down the pickets and entered the fort, having broken down the outer gate. When they

entered, Mr. Spencer asked where the pemican was, or Mr. House, who was with him, did. I said that he had a good nose, and might find it out.

Mr. Sherwood. Let me ask you now, Sir, was you an eye-witness to this transaction from first to last?

Mr. Pritchard. I was. I saw the whole of it. It was an armed force that accompanied Mr. Spencer. They had guns with bayonets. They found the pemican after searching some time, and took it away. There was about four hundred bags of it; there might be more; my memory is not very accurate, but I think there were about four hundred bags, each bag weighing about eighty-four pounds. I have only hearsay knowledge of Fort Gibraltar being taken by the Hudson's Bay Company, but when I went to it, I found it in possession of Colin Robertson. I also know of Fort Pambina, but not of its being taken. I know of prisoners being taken from there and sent down. There were Bostonois Pangman and others sent, upon my application for burning my crops. I know that Mr. Holte was one that accompanied Governor Semple on the 19th June, to go and see what the party on horseback wanted. I do not know that he was there fighting; he had not much time to fight; he had a gun; the party generally had guns, and some of them guns with bayonets, but not all. I know the hand-writing of the late Mr. Holte. (*A letter produced.*) This letter, addressed to myself, is the hand-writing of the late Mr. Holte.

The following letter was then, upon motion of Mr. Sherwood, put in and read.

Fort Douglas, April 14th, 1816.

Mr. John Pritchard,

MY DEAR SIR,

I received your kind letter, but what you mean by the explanations you therein mention, may I be damned if I know, as I do not recollect having mentioned any thing of the kind; however, my passions often bring me into errors, which I afterwards wish were at the devil—so no more about it. Mr. Lofty once in my presence injured your character, but this I would not

admit of, and you of course must submit to be tried by a court martial, where you, no doubt, will be honourably acquitted, and Mr. Lofty replaced to answer for himself. Some days ago, I got the command of the schooner which is to be fitted out in man-of-war style, to be moored at the bottom of this river to intercept the North-West Company's canoes. So you see now that I will be in my proper glory, and I shall not fail to do my best to give the North-West scoundrels a drubbing if I can.

A party of veterans are lately gone to Qui Appelle to take Macdonell, if possible; but I fear they will be disappointed in their views; they are under the command of Mr. Lofty's olio of perfection (Mr. Pambrun). I should send you some few of my private property, were I not informed that you have received a supply. You'll no doubt soon be here, when we shall, over a good cup of tea, settle every thing; in the mean time I beg you'll be kind to present my compliments to Mrs. Pritchard, and the gentlemen of your mess. Tell Dr. White that I should have sent him a letter long ago if I had but had paper; but as that has not been the case, he will, I know, readily excuse me.

I am, my dear Sir,

Your sincere

(Signed)

O. HOLTE.

Mr. Sherwood. Pray, Sir, who is meant by Mr. Lofty in this letter?

Mr. Pritchard. Mr. Lofty means Colin Robertson. I did not see Mr. Holte fire, *nor do I think he had time to fire*; I think it impossible, he was shot so soon. The prisoner Boucher certainly did all he could to save my life; when I was attacked I ran round him, and by that means, avoided being shot.

Mr. Sherwood. You was brought, I think you say, to Fort William. Where is Fort William, Sir, and how far off?

Mr. Pritchard. Fort William is on Lake Superior, and is about a thousand miles off. *It is a fort belonging [belongs] to the North-West Company, and is in their possession at present.*

Mr. Sherwood. Do you know, Sir, if that fort was ever taken? I do not know, my Lord, that it is necessary

that I should go into evidence upon that subject; I was going to shew the state of enmity existing against us in that instance, but——

Chief-Justice. There is enough shewn to prove the malevolence that existed on both sides*.

The Honourable WILLIAM BACHELOR COLTMAN,
sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Coltman. I went up into the Indian country in the year 1817, and to the place where the Settlement at the Red River was established. I never made any survey of the distance which it was from Lake Winnipic, but I should think that it was about sixty miles, and having about a south bearing from the nearest point;—but, as to distance, I cannot speak so positively. It was situated at the Forks of the Red and Ossiniboine Rivers, which I have generally understood to be in about 49° 30' north latitude, and the Red River Settlement commenced at a short distance below the Forks. Its longitude I do not recollect, so as to speak with any degree of certainty, but I should judge it to be in between 90° to 100° of west longitude; my recollection, however, is very imperfect, but I should think it had something more than 90° degrees; it certainly had more than 80°, and, according to my recollection and own idea, rather more than 90°. The Red River Settlement was to the west of the River Winnipic, to the south-east of the Lake Manitobah, and between that Lake and the River, and Lake Winnipic. Upon consideration, I should think, according to the best of my recollection, that its longitude must have been nearly 100° west. I

* In the evidence hitherto produced, there is indeed abundant testimony of malevolence on one side, but what is the evidence upon the other? Perhaps it will be answered, that it may be found in Mr. Holte's letter. But the learned Judge surely could not mean to say, that the idle rhodomontade of one individual was to be taken as a criterion of the sentiments of the whole population of the Settlement.

have seen the Great Seal of Lower Canada, and should know its impressions.

Chief-Justice. There is no occasion to examine Mr. Coltman on that, they prove themselves; it has been so decided.

Two Great Seal Instruments were put in and read.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Coltman. I have been at Fort Douglas, and also at the spot where it was represented to me that the affair of the 19th June took place. I did not go farther north into the Indian country, than into the Red River country, through the River Winnipic, and part of the lake of that name. It is certainly a matter of notoriety, that the Red River country was formerly frequented by the French traders, that is, before the conquest by the English; but I do not know whether Nouvelle France was considered as taking in this part of the Indian territory.

Chief-Justice. I am tolerably conversant with maps myself, but not sufficiently so, as to say whether this part of the country was, or was not a part of Canada. I never understood, extensive as were the limits of what the French called Louisiana, that they spread so far north as this, nor can I say distinctly that it formed a part of Canada. Relative to Nouvelle France, it was never, I believe, defined with sufficient accuracy to enable us to say what were its limits. If they have been, it is beyond my knowledge.

Attorney-General. There is one more question, Mr. Coltman, which I will trouble you with, whether, as a Magistrate of the Indian territory, you acted at Red River in virtue of your Commission under the Act of the 43d Geo. III.?

Mr. Coltman. Yes, it was in prosecution of my duties under the Commission, that I went into that country, and proceeded to the investigation of the difficulties which had occurred there.

CHARLES BELLEGARDE, *sworn*.

Examined by the ATTORNEY-GENERAL, through the medium of an Interpreter.*

Bellegarde. I was at the Frog Plains on the 19th June, and had been there some time before. I have a knowledge that Governor Semple was killed, but do not know on what day. I saw him the same day that he was killed. I heard the firing the day he was killed, and I saw him four or five hours before. I had no conversation with him about an attack. I never heard any rumour about an attack. Governor Semple was at my house. I said, perhaps the Bois-brulés might come; he said, they may come if they please, I shall go and meet them. Governor Semple did not, nor did I, say any thing about their firing. He said, if the Bois-brulés come, that he was not afraid; so far from it, he said, "should they come, I shall go and meet them with one man and a paper." I did not see any coming while Governor Semple was with me, but four or five hours after, I did see about sixty coming down on horseback. I have a knowledge that they took three prisoners, a woman and two men; I did not see them taken, but they were brought to my house. I do not know that they were brought to my house to be prisoners, but the half-breeds brought them. Cuthbert Grant was there, but I do not know whether he took them or not. I saw Boucher there, and Brown too, but he did not come with the sixty; he came afterwards. Grant and Boucher said they had taken these persons to prevent them from giving information to the fort. About fifteen to twenty of the half-breeds came first, and the remainder afterwards. When the first party came, they unsaddled their horses.

* This interpreter, William Smith, spoke French very imperfectly: he was a noted partisan of the North-West Company, who had been employed by them as a Sheriff's officer, and is now one of their commercial agents. At the time he was thus employed to interpret on these trials, he was engaged in a civil suit against Lord Selkirk; in which the Attorney and Solicitor-General were employed as his counsel.

The latter party came when the sun was low ; it was late in the afternoon. The party conducted themselves quietly, and seemed peaceable. The first thing I heard after they came, was two men of this party say, the English were coming down after them, and they went immediately to meet them. When they brought the prisoners to my house, they said they would send them the next day to the fort, but they did not say what was then to be done with them. They assigned no reason why they would send them.

JEAN MARIE MONDELET, Esq. *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Mondelet. I have seen Boucher before. I am a Magistrate of Lower Canada, and in that capacity I saw François Firmin Boucher, who made a declaration before me, but not under oath. There was no threat made use of, nor any promise of benefit held out to Boucher, to induce him to make it. (*The Attorney-General was about presenting a paper to Mr. Mondelet.*)—

Mr. Sherwood objected to the evidence being received on account of the declaration being made by the prisoner, when under arrest for an offence committed in the Indian territories by the warrant of a Magistrate, whose jurisdiction did not extend to the Indian territories.

The Attorney-General proposed, that without entering into the question as to Mr. Mondelet's authority as a Magistrate, he should be desired to relate all that he had heard the prisoner say on the subject. But Mr. Sherwood objected, that Mr. Mondelet's knowledge of the subject was obtained only by means of an illegal warrant, and while the prisoner was in a state of illegal duress, and that it was not therefore competent to examine him on the subject.

Mr. Mondelet requested permission to mention, that in the course he had adopted, he had been sanctioned by the written opinion of the Judges of the Court of King's Bench at Montreal.

The Chief-Justice having intimated doubts respecting the power of the Magistrate to take cognizance of the offence, the Attorney-General did not urge the reception of the evidence*.

* The following is a translated Copy of the Document referred to.

District of Montreal. } Voluntary Declaration of François Firmin Boucher, accused on oath of having, on the 19th of last June, killed at the colony of the Red River, twenty-one men, among whom was Governor Semple, says, That he did not kill any person whatever; that he was sent, four days before the death of Governor Semple, by one of the partners of the North-West Company, Mr. Alexander Macdonell, from the Portage de la Prairie, to carry provisions to Frog Plain, about three leagues lower than the fort at the Forks of Red River. That he and his companions, to avoid being seen by the Hudson's Bay settlers, passed at a distance from the Hudson's Bay fort. That, with the view of weakening the Hudson's Bay party, the Bois-brûlés wanted to carry away some of these Hudson's Bay settlers; and, assisted by the declarant to interpret for them in English, they went and carried one off. That, as they proceeded towards Frog Plain, they observed a group of the Hudson's Bay people, upon which a certain number of the men in the service of the North-West Company, called Bois-brûlés, joined the declarant and his companions. That these, thinking the Hudson's Bay people meant them harm, (because they advanced with their muskets in their hands), the Bois-brûlés wanted to fire on them; but the declarant opposed their doing so. That at last he advanced alone to the Hudson's Bay party to speak to them, and came so near Governor Semple, that the latter took hold of the reins of his bridle. That they talked to each other; that the Governor took hold of the butt end of the declarant's gun, and ordered his people to advance; that they, not obeying him, and the declarant saying that if they fired they were all dead men, Governor Semple said that they must not be afraid, that this was not a time for it, and that they must fire. Immediately the declarant heard the report of two muskets fired by the Hudson's Bay people. That at this moment the declarant threw himself from his horse, still holding the mane; and that the horse being afraid, dragged him in this manner about the distance of a gun-shot, where he remained. That, from the moment when he was thus carried away by his horse, the firing became general between the people of the North-West and the Hudson's Bay Company; that the fire was begun by those of Hudson's Bay. That the men in the service of the North-West Company were about sixty-four in number, armed, (of whom thirty were at the beginning of the firing) assembled for the purpose of taking the Hudson's Bay fort by famine. He is uncertain by whose orders, but supposes it was by their chiefs, that is, Mr. Macdonell, Mr. Grant, Antoine Oulle, and Michael Bourassa. That he heard Mr. Macdonell enjoin them to avoid a meeting with the Hudson's Bay people.

That, after the firing was over, he saw a Bois-brûlé, named Vasseur, near Governor Semple, then wounded in the knee and the arm, who was

It being past ten o'clock at night, the Court was adjourned till to-morrow morning, the Jury being placed under the care of Mr. Sheriff Ridout.

TUESDAY, 27th OCTOBER, 1818.

LOUIS NOLIN, *sworn,*

And examined by the ATTORNEY-GENERAL, through the medium of Mr. SMITH, as Interpreter.

Mr. Nolin. On the 19th day of June, 1816, I was at Red River at the Forks, at Fort Douglas. I saw a number of persons on horseback and armed pass the fort. Those that were in advance I did not see pass, but the last part of them I did. There were perhaps about thirty or forty of them. I cannot say exactly, but they appeared to be about that number, looking at them from Fort Douglas. They were a part of the same band who were in advance, and they went by two or three minutes after the others. I know that Mr. Semple went out with about twenty-six or

taking care of him; and who, notwithstanding, had taken his belt or sash, his pistols, and his watch; and afterwards carried them away. That the Hudson's Bay people were about thirty in number, and that he had seen about fifteen of them killed. That he himself had, at the moment, saved one Pritchard from being killed; and that François Deschamps, and several other Brulés, wanted to kill him.

The declarant, having declared he could not sign his name, made his mark of a cross, after this was read over to him.

Declared before me, at Montreal,
the 29th of August, 1816,

(Signed) J. M. MONDELET, J. P.

No comment can be necessary on the importance of this document, as a proof of the malicious intentions of the party under Cuthbert Grant, in coming down upon the Settlement, and that their object was, not to convey provisions, but to starve the settlers till they should surrender. It is very extraordinary that the Attorney-General should have given up so important and decisive a piece of evidence, upon a mere hint from the Bench. Its legality had been established as far as the opinion of the Judges of Lower Canada could sanction it. It consequently became his duty to press its admission to the utmost; and to call for the formal decision of the Court, before he abandoned it.

twenty-eight persons. I did not go, I was not asked to go, and there were from fifteen to twenty others left in the fort. I do not know that these refused to go, or that they were asked to go, nor can I say whether Mr. Semple forbade them to go. *I would have gone but Mr. Stitt, who had gone out to accompany Mr. Semple, returned, Mr. Semple saying that he did not need him, and that I was to remain too.* We heard shortly after some firing, but it blew so hard we could not hear it very distinctly at the fort. I did not hear Governor Semple say why he went out with the men. I had been out that day with Mr. Semple a distance of three leagues, and he told me, whilst we were together on the road, that if the Métifs should come, as we had been told they would, and they went by the fort quietly, and did no mischief, they should not be interrupted. I did not see Mr. Semple and his party immediately on their going out, but I saw them at a distance of two or three arpents from the fort; they appeared to me to go as they pleased, without being in any particular order, they were dispersed about. I staid in the fort on the night of the 19th June, and on the next morning, I saw a number of dead bodies brought to the fort, and amongst them that of Governor Semple; it was wounded in three places with balls, but there were no marks of lance or spear-wounds. Cuthbert Grant came the next day to the fort, with a number of persons, and amongst them the prisoners Brown and Boucher. I had no great conversation with Grant. He appeared to wish to make it appear like an engagement, and that Mr. Semple's party had commenced it. I cannot, of my own knowledge, say whether Paul Brown was in the engagement or not, but I was told by several persons that he was not. Some of the persons who came the next day to the fort with Grant, were dressed in clothes which had been worn *the day before* by some of the people who went out with Mr. Semple. One Lacerte was dressed in the clothes of one of Governor Semple's people. Cuthbert Grant did not tell me that they had any plans for taking the fort, but the next day he told me he must have the fort, and that the people there must go away. I did not see Mr. M'Leod there, that is,

at the fort ; but two days after I saw Mr. M'Kenzie there, and Cuthbert Grant met him, and they conversed together ; but as I understood very little English, it was only here and there a few words that I made out. Mr. M'Kenzie told the Métifs that Lord Selkirk was coming with soldiers, and that he had no right to their lands ; that they were theirs. I asked Cuthbert Grant to let me go and help to bury the dead, and he told me I might, that there would be no danger then, but that he must have the fort the next morning, as his young men would wait no longer. I do not recollect the exact words, but that was nearly what he said.

Attorney-General. Did Cuthbert Grant, Paul Brown, or François Firmin Boucher, say any thing to you that they had come to Fort Douglas, or to the Red River country, with an intention to attack it ?

Mr. Nolin. No, neither of them told me that it was for the purpose of attacking it that they had come down. Before this time I know we were in fear of an attack. I know that some Indians came to the fort, and told us that we were to be attacked ; some of the Indians offered assistance ; they told us that from the appearances at Portage des Prairies, they were apprehensive we should be attacked, and they feared Mr. Semple might be killed, and that they would give us their assistance, to protect him. Mr. Semple, however, refused their assistance, not thinking that they would attack us. When Mr. Semple and his party went out, I heard no orders given by him, or any body else, about attacking this party. When they went out, I cannot think they had any intention of attacking the armed party at all events, but I *really* [should] believe he merely went to see what they wanted, and who they were.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Nolin. I did not see Mr. Semple's party at the moment they went out, but I saw them at a distance of about three arpents from the fort. They were armed with

guns, of which some had bayonets. I have been three years in the service of the Hudson's Bay Company. I have heard talk of Mr. Miles Macdonell's Proclamation.

Mr. Sherwood. Do you know of the taking and razing of Fort Gibraltar, and the seizing of the North-West Company's pemican by the orders of the late Robert Semple?

Mr. Nolin. I have heard of pemican being taken, but do not myself know of it. I do know that Fort Gibraltar was taken, but I cannot say that it was by the orders of Mr. Semple, or that it was not.

Mr. Sherwood. Do you know that it was razed down to the ground, the pickets torn up, and the whole floated down in rafts to Fort Douglas, which was Mr. Semple's residence?

Mr. Nolin. I know that it was floated down to Fort Douglas.

Mr. Sherwood. Where were pickets in the raft with it?

Mr. Nolin. Yes, there were pickets in the raft. I heard that Fort Pambina was taken, but I do not know that it was, for I was not there, but I did hear that it was taken. There were some pieces of cannon in Fort Douglas on the 19th June, but I do not know of any on the other side of the river, nor do I believe there were any. Lacerte passes for a half-breed, and he was, when he came next day to the fort, in the clothes of some of the party who went with Mr. Semple on the 19th, but I did not see either of the prisoners wearing their clothes. I went during the next year with Colonel Coltman to shew him the locality of the battle ground.

DEFENCE.

Mr. Sherwood. Before we commence our Defence, I would remind the Court, that there had been a desultory argument, relative to which was the actual state of this country, or rather, as it was in a state of private war, as to what the effect of this state of warfare would be upon this affair of the 19th June, supposing for a moment, that it

should be clearly proved that the prisoners participated in the quarrel, to the full extent which the Indictment charges them to have done; and I had then the honour of submitting that, under this state of warfare, that which would be murder here, was not murder there. In arguing from the 43d of the King, I was rather taken by surprise. It was urged that the Act made some change in the law; that, however, is not the case. It makes no change whatever; I am aware that, in construing Acts of Parliament, the intent of the framers is always to be taken into consideration, but we must invariably refer to the words of an Act for its intention, and where they are clear, there is no occasion for any other assistance. It is only where ambiguity attends the Act, that it is necessary to call in the aid of explanatory rules, and about this statute there is none, its title is exceedingly clear; its preamble also, and its enacting clauses equally so. It is simply entitled, "An Act for
 " extending the jurisdiction of the Courts of Justice of the
 " Provinces of Lower and Upper Canada, to the trial and
 " punishment of persons guilty of crimes and offences
 " within certain parts of North America, adjoining to the
 " said Provinces." Upon referring to the body of the Act, we shall find that these "certain places" are places which, besides being without the limits of these Provinces, or of the jurisdiction of any of their Courts, are also not within the limits of any civil government of the United States of America. So much for the places; now for the description of, or what is to be understood by crimes and offences committed in these places. The Act declares that, from and after the passing thereof, "all offences committed
 " within any of the Indian territories, or parts of America,
 " &c. shall be, and be deemed to be, offences of the
 " same nature, and shall be tried in the same manner,
 " and shall be subject to the same punishment, as if
 " the same had been committed within the Provinces of
 " Lower or Upper Canada." What then, I ask, was the state of that country? It was in a state of war; if it was not a private war, it must be treason that has been committed; but we say, and without apprehension of being

contradicted, that it was a private war, and had nothing of a treasonable nature in it. As these offences committed in the Indian territory are, by this Act, declared to be of the same nature as if they were actually committed in the Province where they are to be tried, I would ask, what, (if by possibility we can contemplate our happy state of tranquillity being changed into a similar state of conflict to that which has desolated this "Indian country"), I would ask, what in that case would be the offence committed? The answer is immediate; it would be a great riot or contempt; it would, it must, be this, and nothing more; for it has been so decided by the highest authority in the case of the Barons of England: it was the decision of the highest authority, for it was the decision of the Parliament itself. If all crimes and offences committed in the Indian territory are declared to be offences of the same nature with similar offences committed in the Province where the offence is tried, we say the law of England is the law of Upper Canada, and in the cases of the Lords Marchers, and the great Barons of England, Gloucester and Hereford, which are precisely similar, for it is expressly set forth in Hale, that they "killed many," and "burnt houses," and committed "divers outrages on both sides," yet it was only a great riot and contempt; and so again the decision upon the Earls of Northumberland and Westmorland's case, which I read from my Lord Hale in Norman French, is precisely the same, and so I contend it must be here. I again repeat, that the law of England is no way altered by this Act of the 43d Geo. III. It is merely an Act to extend the jurisdiction of the Courts of the two Provinces of Canada, and the duty of the Judges under its provisions is to administer the laws in the same manner, in relation to offences committed in the Indian country, as if they were committed in their ordinary jurisdiction. Following up the authorities I have produced, even here, where we have a representative of the Sovereign, commissioned by himself, the offence charged in this Indictment could not be murder; it could only, supposing a similar state of the country, be a great trespass,

a great misdemeanour, such as a riot. But in the Indian country, against this mock Sovereign, this self-dubbed Governor, this Sancho-Panza tragedy-king, (who, however, is given up by the Crown officers), it was nothing but the legitimate exercise of the right of self-protection and defence against an audacious assumption of lawless power. In that country, in brief, I say, it could not be murder, if the Crown even sustained its Indictment.

Attorney-General. I beg, my Lords, to say, that if that is the opinion generally held in that country, the sooner it is corrected the better. The sooner the better that, by the decision of the law it is made known, that killing a man in cool blood is murder, in any part of His Majesty's dominions, however remotely situated. But it does, my Lords, appear to me a most singular line of defence which the gentleman proposes to adopt, to justify one aggression by another, and to assume that, from the frequency of illegal acts, therefore there is no law to which the culprits are amenable, or that the crime is different there to what it would be if committed here. With great submission, my Lords, I do conceive it to be a most unusual and irregular defence, and one that ought not to be allowed by the Court.

Chief-Justice. We shall not allow the Defence to be taken farther back than the circumstances completely connect themselves with this case, by shewing a continued state of aggravated feeling, which at any moment was likely to lead to such fatal results as the termination of this melancholy affray of the 19th June. The situation of the parties, and local circumstances, must, in every case, be taken into consideration, and these, being in no two alike, cannot therefore be governed by any absolute rule. As the concomitant circumstances, so must be the mode of conducting cases; what then is proposed at the present moment? The Defence of these prisoners is (say their Counsel,) that the unfortunate state of the Indian country, from the two great hostile parties carrying on trade with the natives being involved in constant quarrels, had worked up the servants of each party to the highest pitch of ex-

asperation, which shewed itself in acts of aggression upon the persons and property of each other whenever they met. That, under this state of mind, these two parties met on the 19th June, and that, from the private war which existed between the rival traders, the unfortunate loss of lives does not, though even proved, constitute a charge of murder, but of riot and contempt. I think they are entitled to prove this state of things, if they can, from any particular period without any interruption; but, as I have before pointed out, it will be for the Jury to say, whether it does diminish the crime in that way. They say this would be the case in England under similar circumstances, and that, *a fortiori*, in a country where there is no administration of the law, they are the more entitled to shew those circumstances which evince that a private war did exist, and therefore that, though lives were lost, yet the taking them was not murder; and as it is of murder they are accused, they must be acquitted. The argument they found upon general principles of law, which are not altered by the Act of 1803, but extended in their administration by an extra-jurisdiction being given to the Courts of the two Provinces of Canada.

Attorney-General. I beg leave, with respect to the state of private war which has been drawn into this case, to say, that although it should even be proved to have existed, I consider it as no defence. The charge against the prisoners is a charge of murder, and is to be tried here, though committed in the Indian territory, in the very same way that a charge of murder in the Home District would be tried. As to any alteration in the law being introduced by the Act of 1803, my argument was mistaken, if it was supposed that I considered that statute as doing so. I never did consider that it was the statute of 1803, which declared the opinion, that in that country there was no law but the law of the strongest, to be an erroneous opinion. I never did think that before this Act it was competent to any person to say, that there was no Court having power to try for offences of the blackest dye, which were committed in that territory, or that its population were ame-

nable to no law but that of uncontrolled passion. My idea of this Act was, that it was necessary to enable offences committed in the Indian country to be removed to the Provinces of Canada for trial, and having, under its authority, put upon their trial persons charged with offences at which human nature revolts, I did not expect that we should be told that what is murder here is not murder at Red River, or that a justification was to be set up, founded upon the frequency or extent of the practice. I differ with the learned Gentleman, and assert that murder in the Indian territory is the same crime that it is here, and we are not destitute of instances where, under this very Act, the murderer has been tried, convicted, and has received the sentence of death, though it is not yet executed. In that case we did not hear that the country being in a state of private war, presented any palliation of the crime. I am, it is true, very ignorant of the nature of this quarrel, but there can be no circumstances connected with it that can justify the taking of the lives of fifteen or twenty persons. Or, admit as a ground of defence, that the country was in a state of private war, what if, in these quarrels, the property, or even the lives of individuals attached to the North-West Company had been taken, (though I know no instance of either on the part of the Hudson's Bay Company, and certainly not of taking lives,) is that to justify the taking revenge into their own hands, and exterminating a peaceful colony? This very argument demonstrates the actual necessity of acting upon directly contrary principles, and shewing to the persons trading into those countries, that crime is of equal turpitude in the Indian territories, and subject to the same punishment, as if committed in a more civilized part of British America. Admit the principle contended for by the learned Gentleman, and, if aggressions have been committed by the colonists, they may defend themselves by saying, that a year or two before this fatal destruction, they had been driven away. But it is a defence that cannot be allowed to either party. It is not possible that it shall be permitted to plead, as a justification for crime,

that acts of aggression have been committed against you, or that a robbery having been committed on your property, you may therefore, when in sufficient strength, take the lives of the depredators, and justify it by alleging that a private war existed. No, certainly not. We have put these persons upon their trial for murder. The character of murder is well known. It is wilfully, and of malice aforethought, taking the life of another, and life being taken, the law always implies that it was of malice aforethought, and leaves it to the accused to justify the act, by convincing the Jury that it was in defence of his own life, or of his property, and not from malice. But did we ever hear of this principle being carried the length of saying that, as a defence for taking the life of an individual, I will prove that one, two, or three years before I had my property taken, or one, two, or three months, for the time does not at all change the argument, and that I was apprehensive I might have it taken again? Certainly not; nor can it in the present case. Admit this principle, and it is of no use that the Parliament of Great Britain have wisely and humanely passed the Act which enables the provinces of Canada to prosecute and try in their Courts offences committed in the Indian territories, in the same manner as if they were committed within the province where the same is tried. It is in vain that the offender is subject to the same punishment, or that offences committed in the Indian territories are declared to be offences of the same nature as if committed here; for once admit this reasoning, and private war must exist for ever, as there is no power capable of controlling its fury, or of awing, by the dread of the vengeance of the law, those feelings of hostility and malice which are the legal characteristics of murder.

Mr. Sherwood. I shall trespass but a few moments on your Lordships' time, in reply to the learned Attorney-General, who has very unfortunately mistaken my argument, or rather been answering one of his own. It was not a position of mine, that the crime of murder could not be committed in the Indian territories by life being taken

from malice aforethought; but my position, founded upon the high authorities of my Lord Hale and Sir William Blackstone, was, that if the state of the Indian country was similar to that I referred to in the annals of English history, in the reign of Edward the First, when a private war existed between the Lords Marchers, then, although lives were lost, it was not murder, but a great trespass. That was my position; a position which, I repeat, and one in answer to which, instead of a brilliant display of elocution upon the nature of murder, and the power to try individuals perpetrating it in the Indian territories in the Courts of the provinces of Canada, which has never been questioned by me, I should have been gratified in hearing something like argument supported by law. No doubt but murder can be committed in the Indian territories. No doubt but a Bois-brulé may commit murder, and be tried under the Act of the 43d of the King. No doubt but Charles de Reinhard has been tried in the Lower Province, and has been convicted, and received sentence of death under this very Act. But, I ask, is that the case of these persons? or, is there any analogy between the case of the Barons of England, who, with their adherents, killed many, and committed divers outrages, burning houses on both sides, and which, being done in a private quarrel, was adjudged to be only a great riot and contempt, and the commission of a solitary murder, by De Reinhard, after travelling fifteen miles with the individual? Is there any analogy between the case of De Reinhard and that of two parties, belonging to great rival commercial establishments, meeting, and in the heat of ill blood, a battle taking place, and lives being lost? Is the solitary murder of an individual, by those who were armed when he was not, to be compared to this meeting of two armed parties belonging to companies, the extent of whose resources are second only to the East India Company, which may be called a nation, or more properly nations of itself, having armies at command, consisting of hundreds and thousands to support its interests when they come in collision; whose passions were exasperated against each

other, so that, like the Barons of England, wherever and whenever their adherents met, they, with the consent of their respective heads, proceeded to outrage and aggression? My argument, I am confident your Lordships will recollect, was directed solely to this point, that, owing to the circumstances of this country, arising from the private war carried on between the great commercial rivalries, the prisoners, even if a participation in the affray was brought home to them, had not committed murder; and I founded this argument upon the analogy between the case of the prisoners and those decided in the time of Edward the First. Against this principle of law, supported by the high authorities I produced, not a single authority of law has been urged. The learned Attorney-General, contenting himself with exercising an adroitness of elocution, has not, in laying his case before your Lordships and the Jury, exhibited a single evidence that this, which I call a private war, did not exist in reality. It will be my duty fully to establish this point by testimony, and I can have no doubt of the application of the solid legal distinction I have taken. I shall first call Mr. John Pritchard, a gentleman who has been examined on the part of the Crown.

(Mr. Pritchard was sent for, but was not found in attendance.)

The Attorney-General then stated, that there was another witness that he was desirous of examining before the Defence was gone into, and probably by that time Mr. Pritchard would be in attendance.

LOUIS BLONDEAU, sworn.

Examined by the ATTORNEY GENERAL, by Interpreter.

Blondeau. In 1816 I was at Fort Cumberland. I was there during the winter, and also in April of that year. Duncan Campbell commanded at that station at that time. I do not know if it was John Duncan Campbell, but it was Duncan Campbell.

Mr. Sherwood. I should, before the examination of this witness is pursued, like to ask him a question or two

touching his religious impressions, whether he is a Christian or an infidel, for I have strong doubts of his having any idea of the nature of an oath. What religion are you of, Blondeau? Have you been baptized?

Blondeau. Yes, I have; I am a Christian.

(Mr. Sherwood said, that, after that answer, he should not oppose the witness being examined, he would not put any additional questions upon the subject of the religious belief of the witness.)

Examination resumed by the ATTORNEY-GENERAL.

Blondeau. In April 1816, I was at Fort Cumberland, and Campbell did invite us to fight the people of Red River. It was about the 10th or 15th of April. The invitation was to drive away the English. I refused to go, for I had no interest in going, and so I told Mr. Campbell. It was said that it was to defend our lands we were to go, but I said I had no interest more than others in the lands, and did not wish to go. I know that a party of half-breeds did go; among them was one Vasseur, Vassal, Deschamps, the brother-in-law of Bruce, one Boucher, not the prisoner, and one Morrison. I believe Morrison was English, but he was one of our people, and they were all that went, as I recollect, except one M'Kay, son of Alexander M'Kay, I do not know his Christian name. I remember that he went. Before they went away, Mr. Campbell told them to take great care when they got to Red River, that they were not taken by the English, and if they were attacked, by them, to mind and begin with the heads or the principals, because he said they must have the principals or their heads. It was in French that it was spoken, and the words made use of were—" *Il faut absolument que vous commencez par les principaux, et que nous ayons les chefs, ou leurs têtes.*" Mr. Campbell particularly mentioned Governor Semple and Mr. Robertson, as the persons whom he must have, or their heads. He owed them a grudge, as he was formerly a clerk of theirs, or under them. This party set out armed with guns, pistols, and dirks, or short hangers (*couteaux de chasse*). They set out in April

from our fort. Six or seven of our people went, and they went away upon the ice. I have not seen M'Kay since. I have seen another person who has. I did not afterwards see any of those who left Fort Cumberland, but some of our people belonging to other departments saw them, or some of them. I have not heard the prisoners speak of what they did at the battle. I have not seen Cuthbert Grant since the 19th June, 1816. I saw two people at Fort Cumberland who spoke of the affair—

Mr. Sherwood. You must not tell us what they said to you.

Blondeau. The general conversation at that time was, that our people were going to assist in the destruction of the English.

Attorney-General. That is the case on the part of the Crown.

Mr. Sherwood. I have no questions to put to Blondeau. The course we shall take in the Defence will be to read the Proclamation of Mr. Miles Macdonell; and from that period up to the moment of Mr. Semple's going out to meet the party on the 19th June, we will prove a continued series of aggressions committed by the party to which these persons who lost their lives belonged. The Proclamation we wish to have read, as it is our first piece of evidence. *(It was accordingly read again: see p. 61.)*

HENRY FORREST, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Sherwood. Do you know Louis Blondeau, and is he, to your knowledge, in the service of the Hudson's Bay Company? *Q*

Mr. Forrest. I know Louis Blondeau, and I should presume that he was in the service of the Hudson's Bay Company; but I do not know, or am not positive, that he is under an engagement at present.

Mr. Sherwood. Do you know, Sir, that he was lately in gaol at Montreal, and why he was taken out of gaol? *Q*

Mr. Forrest. I know he was in gaol, and that he was taken out to be brought up here.

Mr. Sherwood. But you do not know whether he is actually in the service of the Hudson's Bay Company at present?

Mr. Forrest. I have no positive knowledge that he is, but I suppose he is, because the Hudson's Bay Company advance money from time to time for his support. He was taken out of gaol, as I have said before, to be brought up here as a witness. He was put into gaol for debt, by the agents of the Hudson's Bay Company. Their reason for imprisoning him was, that he was going to desert, or to leave the Province; they had reason to apprehend that he was. I have every reason to believe that he is a very honest man; his only fault I believe to be, that he is too much given to liquor; but, except that, I consider him to be a very honest man. The reason for putting him into gaol was, an apprehension that he was going away without settling his accounts. I know of no other reason.

Mr. Sherwood. And does that conduct correspond with your idea of a very honest man? Do you think it an honourable trait [is very honest to be a drunkard, and an absconding, fraudulent debtor?]

Mr. Forrest. I certainly do not call it an honourable trait of character; but except for his being given to liquor, [and not paying his debts,] I consider Blondeau to be a very good and an honest servant.

JOHN M'DONALD, Esq. sworn.

Examined by Mr. SHERWOOD.

Mr. M'Donald. I know Louis Blondeau well. I have known him for upwards of ten years. He was formerly in my service. I was then belonging to the North-West Company, but do not now*. Blondeau has not the best

* This Mr. M'Donald (familiarily called "Gart," or by the Canadians, "Bras Croche,") is brother-in-law to Mr. M'Gillivray, the senior partner of the North-West Company. His name is included in the list of partners in

of characters ; he was very much addicted to liquor, and a man in whom implicit confidence could not be put. I would not give him implicit belief on his oath ; he was altogether such a man as I would not have in my service if I could do without him. I certainly would not have him in my service, if I could dispense with him*. From my residence in the interior for a number of years, I am well acquainted with the manners and customs of the half-breeds, and they do occasionally paint themselves ; their habits are very like those of the Indians. They mingle constantly with the savages, and hunt and fish like them ; they are not accustomed to cultivate the ground, but live generally by the chase. Some of the greatest chiefs are among the half-breeds.

Mr. Sherwood. I would ask you, Sir, is their painting themselves an uncommon thing, or does it indicate an hostile disposition, a manifestation of going to war ?

Mr. M'Donald. By no means uncommon. I have seen them very generally painted†. It is not at all uncommon

the indictment against Colin Robertson and others, tried at Montreal on the 15th of May 1818 ; upon that occasion evidence was produced, on the part of the North-West Company, that this M'Donald was a partner in 1816, and, according to the rules of the North-West Company, on retiring from the active duty of a wintering partner, he would be entitled to participate for seven years in the profits of the Company's trade. A person so participating would be considered in England as a partner, so that this witness seems to speak inconsiderately in saying, that he does not *now belong* to the North-West Company.

* Blondeau had been employed by the North-West Company for upwards of thirteen years in the capacity of guide, and entrusted annually with the charge of a brigade of six or eight canoes, with the command and superintendence of thirty or forty men, and the custody of property to the value of many thousand pounds ; and was removed from this charge, only because he refused to engage in hostile proceedings against British subjects. This might have been proved by witnesses who were present, and it might also have been proved, that a few months before this trial, one of the agents of the North-West Company had offered very high wages to Blondeau if he would return to their service.

† Mr. M'Donald's evidence on this point is at variance with the testimony of every intelligent man (not belonging to the North-West Company) who has had any intercourse with the half-breeds, who, like the white engages, are usually bound by written contracts to serve the traders, which is never the case with the Indians.

to see them painted, and is no proof of hostilities being intended. I have seen them constanly painting and decorating themselves *with feathers* at their toilets.

Chief-Justice. The object of this testimony is evident; it is to counteract the effect that their going disguised and painted might have, if it was not an usual practice in that country to do so. Mr. M'Donald says it is a common practice, and not an indication of any hostile intention. Are these half-breeds like Indians in their manners and customs? or do they attach themselves to the white population? Are they, Sir, like Indians?

Mr. M'Donald. The major part are like Indians, and they paint like the Indians. Some of the most powerful and greatest chiefs are among the half-breeds.

Mr. Sherwood. We have heard a great deal about this party being armed, will you tell us whether that is a common practice in the Indian countries, or is it a necessary precaution?

Mr. M'Donald. On any and every voyage and journey in that country, some of the servants carry arms, and sometimes even the whole of them do, and I consider it necessary that they should do so to defend themselves, and to obtain provisions.

Mr. Sherwood. How long, Sir, did you reside in that country?

Mr. M'Donald. I have resided there upwards of twenty years.

Mr. Sherwood. And from your knowledge of that country, do you consider it necessary that the traders with the servants, should carry arms for their personal defence, and for their subsistence?

Mr. M'Donald. I certainly do, both for their personal defence, and as a protection against wild beasts. As a means of obtaining provisions it is absolutely indispensable that they carry arms. I have been frequently in danger from wild beasts, and found it absolutely indispensable to my personal safety to go armed.

Mr. Sherwood. Is it, Sir, an unusual thing in that country, for the Indians and half-breeds to give what is

called "a whoop," or do they do it only when they are going to war? are there other sorts of whoops besides war-whoops?

Mr. M'Donald. It is very common to the Indians and half-breeds to give the whoop, and it is by no means confined to their going to battle. It is habitual to them to do so. The whoop they give on all occasions is like the war-whoop; and is so very common, that hardly two get on horseback without giving a little whoop.

Mr. Sherwood. Then hearing this whoop given is not an alarming circumstance, a sure presage of war and hostilities?

Mr. M'Donald. No, quite the reverse. I have frequently given it myself, and if you go into an Indian village, you will hear every boy giving it.

Mr. Sherwood. Will you, Sir, tell us if spears, and bows and arrows, are common arms when the Indians and half-breeds go on horseback?

Mr. M'Donald. Spears, and bows and arrows, are as familiar to the half-breeds and Indians as fowling-pieces are to us.

Mr. Sherwood. Did you, Sir, ever know the half-breeds and Indians to go on horseback armed with muskets?

Mr. M'Donald. I never did. I do not believe that muskets are ever carried by the half-breeds on horseback*, but spears constantly are, also bows and arrows. They are the customary arms they carry when riding.

Mr. Sherwood. Did you ever hear of the half-breeds carrying guns and bayonets? I do not ask you whether you ever saw such a thing, but did you ever hear of it?

Mr. M'Donald. Certainly I never did hear a report of their riding armed with muskets and bayonets; indeed I

* It is a matter of notoriety, that the half-breeds and Canadian hunters carry fusils or fowling pieces on horseback, and use them in hunting the buffalo. The witness appears to understand the word musket as applicable exclusively to a soldier's musket.

consider it as next to an impossibility that they could do so, on the spirited horses that they ride in that country.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. Did you, Sir, ever see Cuthbert Grant in that country, or was he accustomed to paint himself like an Indian?

Mr. M'Donald. I never saw Cuthbert Grant in that country.

Attorney-General. Mr. Grant, I believe, was the son of a partner of the North-West Company. Did you, Sir, ever see the son of one of the partners paint himself like a savage?

Mr. M'Donald. Yes, I have known many sons of partners paint themselves; it is by no means uncommon at their sports.

Attorney-General. Did you ever see forty or fifty half-breeds riding together and painted, with peaceable intentions?

Mr. M'Donald. I never saw so large a party riding together painted. I never saw forty or fifty riding together.

Attorney-General. In what manner do the half-breeds generally live? are they not superior in their habits to the Indians?

Mr. M'Donald. A great many live as the savages do. A few men of them are employed as voyageurs. When the engagés are scarce, they are attached to the parties, and act as servants and canoe-men.

Attorney-General. When they are so employed, do they paint, and preserve the habits of Indians?

Mr. M'Donald. No, not when they are so employed.

Attorney-General. How long is it, Sir, since you was in the interior?

Mr. M'Donald. It was in the year 1814, that I was there.

Mr. JOHN PRITCHARD, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Sherwood. Do you, Sir, believe that the prisoner, Mr. Boucher, saved your life on the 19th June by his exertions?

Mr. Pritchard. I do believe that the prisoner, Boucher, did save my life on that day; for had I been alone, I believe that one Deschamps would have taken my life. I think now that if Boucher had not interfered, Deschamps would have killed me. I have no doubt of it.

Mr. Sherwood. You are acquainted with the hand-writing of the late Robert Semple, I presume; will you look at this letter, and say whether you believe it to be his writing?

Mr. Pritchard. This letter is in the hand-writing of the late Governor Semple.

The following letter was then read, upon motion of Mr. Sherwood.

Fort Douglas, 14th April, 1816.

DEAR SIR,

I have received your several letters; but as I trust we shall so shortly meet, I think it needless to enter upon their contents. There have been thoughts of removing Fort Daer, but that measure has been postponed. It may be well, however, to bring down the doors and windows, and whatever moveable parts our enemies might carry off. I wish all the stores* of the North-West Company brought down here. They have seized our goods in Peace River, and we must try to have a few things to balance the account.

Mr. McLeod's services will be useful in coming down with the colonists and stores. You know his zeal. St. Germain can remain with a few men, until I determine what is to be done with Pambina. I shall order the bearer of this to go by the way of

* The stores here referred to, were some particular stores at that time placed in Fort Daer, which some of the North-West Company's servants had on a former occasion requested might be deposited there. See, at page 20, the evidence delivered by Mr. Pritchard on his cross-examination relative to this subject, on the trial of Colin Robertson and others at Montreal.

the two lower boats, to see in what situation they are. From his report you will judge of what is necessary to be done, and act accordingly. The upper boats, I understand, are in safety. In other points I trust to your judgment. Do what you think best for the general interest, and rely upon finding in me a man who judges from intentions.

I am, dear Sir,

Yours sincerely,

(Signed)

ROBERT SEMPLE.

Mr. John Pritchard, }
Pambina. }

Mr. Sherwood. The letter, I perceive, is addressed to you : pray, Sir, what was your situation with the Hudson's Bay Company at that time ?

Mr. Pritchard. I cannot say that I held any situation with that Company. I was rendering them some services, but without pay or reward. I will, if required, tell how I went to that country.

Mr. Sherwood. It is not necessary. You, I dare say, know Mr. Colin Robertson, and can prove his hand-writing. Look at this letter, and say if it is in his hand-writing.

Mr. Pritchard. It is the hand-writing of Mr. Colin Robertson.

The following letter was then read, upon motion of Mr. Sherwood.

Gibraltar, 20th May, 1816.

GENTLEMEN,

Having heard with pain, that the men under your command were surprised and taken by a superior force of the North-West Company's, I beg leave to inform you that every thing here goes on well.

We sent off Cameron on the 18th for Jack River ; from thence he proceeds to York.

Take courage, and endeavour to inspire your men with the same sentiments.

I am in possession of the North-West Company's fort, and the Governor has put Fort Douglas in an excellent state of defence, and we are determined to dispute the ground by inches.

Inform me by the bearer the real situation the unfortunate event has placed you in; and take care, in delivering your despatch to this Indian, that you are not discovered by our opponents.

God bless you all.

Your's faithfully,

(Signed)

COLIN ROBERTSON.

You may read the letter to your men, and tell them to give no credit to reports of any kind, until you hear from Governor Semple or myself.

(Signed)

C. R.

Mr. Sherwood. Colin Robertson was a very confidential servant of the Hudson's Bay Company; was not he a very active servant?

Mr. Pritchard. He certainly was an active and confidential person, and so esteemed by his employers.

Mr. Sherwood. I perceive Mr. Robertson observes, that he was in possession of the North-West fort. What fort did you understand by that? the fort from which the letter is dated, "Gibraltar."

Mr. Pritchard. Yes, I did.

Mr. Sherwood. Who, Sir, was the Mr. Cameron that was sent off on the 18th to Jack River, and from thence to proceed to York?

Mr. Pritchard. I suppose it was Mr. Duncan Cameron.

Mr. Sherwood. Was he a partner of the North-West Company, and what was he to go to York for? York Fort, I presume, on Hudson's Bay; not this town of York, I believe?

Mr. Pritchard. Jack River is on the route to Hudson's Bay, and Mr. Cameron was sent there on his way to Europe as a prisoner.

Mr. Sherwood. Do you know the hand-writing of Mr. Miles Macdonell, and is this letter, under date of the 24th January, 1817, addressed to Cuthbert Grant, in his hand-writing?

Mr. Pritchard.—It is the hand-writing of Mr. Macdonell.

Attorney-General. It cannot be read, it is no evidence,

nor do I know that it would be in that of Cuthbert Grant even.

Mr. Sherwood. We wish to read it, as shewing the opinion of certain persons relative to this affair of the 19th June, and the Jury might, from the idea of Cuthbert Grant's innocence, make such inferences as they think proper, relative to the other persons charged. If, however, the Court is against me, I do not press the letter.

Mr. Pritchard here desired to explain, that the post called Fort Daer, alluded to in Governor Semple's letter (page 119) was one belonging to the Settlement*.

JAMES TOOMEY, *sworn.*

Examined by Mr. SHERWOOD.

Toomey. In the year 1814, I was in the Indian territory, in the Red River country, but not at Fort Douglas. I know of the Proclamation of Mr. Miles Macdonell; I saw it stuck up at the gate of Fort Daer. I do not know that it was an authority to seize the provisions of the North-West Company, but it was to prevent them being taken out of that country. I do know of two trains of pemican being seized from the North-West people. I was then in the service of the Hudson's Bay Company, and I know that the free men who supplied the North-West Company with pemican had it just ready to start with, and were compelled to put it back upon the stages from which they had loaded the trains. This was done with the approbation of the Hudson's Bay people, and the free men were forbid to move it, and afterwards it was taken out of their possession by the Hudson's Bay servants. I know also of some boat-loads of pemican being taken between Fort Douglas and Brandon House by the Hudson's Bay people, who

* This part of the evidence has been entirely misapprehended by the short hand writer, who gives it as follows:—*Mr. Pritchard.* "I would wish to explain, that in the part of the letter of Mr. Semple, in which he alludes to the North-West Company's stores being brought down to Fort Douglas, and speaks of our goods having been seized, it related to a quantity of furs which had been taken from the Hudson's Bay Company, and conveyed to a North-West fort."

were armed with guns which had bayonets, except perhaps about two or three. There were about twelve or thirteen persons engaged in seizing this quantity of pemican, and they took possession of it by force. The North-West Company had been accustomed to be supplied at this place by the free men as well as the Hudson's Bay people.

The Attorney-General here suggested, that to avail themselves of the permission given by the Court, the counsel for the prisoners should begin at the other end, and shew that at the moment when this melancholy occurrence took place, the state of exasperated feeling existed which they are to trace without interruption to any date they may go back, and he observed, that if such a course were allowed to be pursued, he should deem it his imperative duty to prove that a deliberate intention to destroy this colony existed as far back as 1812; indeed, from the very moment of its commencement, and that in continuance from that time down to the 19th June, when for a second time it was destroyed, hostilities were directed against it, and that this armed force was manifestly sent to commit outrages against the Settlement: he had confined his examination to that armed party, and had never left them for one moment; if the learned gentleman were permitted to pursue the course they had commenced, he should rebut it with testimony that would seriously aggravate that most afflicting catastrophe*.

* This course was pursued, and yet the Attorney-General took no steps to do that which he here acknowledges to be his imperative duty. He was repeatedly urged by persons, who attended on the part of the prosecution, to bring forward the evidence which he here alludes to: he declined doing so on the ground that the whole matter was irrelevant; but the Court had decided that it was relevant, and that decision, however erroneous, had opened a door to the admission of evidence, which it was essential to the purposes of justice to rebut, and which the Attorney-General had ample means of rebutting. He alludes himself to a letter which he could have produced, written in the year 1812, before the first settlers had even arrived at Red River, a letter written from London by Mr. Simon Mc'Gillivray,

Mr. Sherwood and Mr. Livius Sherwood supported the course they had begun to pursue by the same arguments they had before insisted on.

the principal partner and agent of the North-West Company there, pointing out to his associates in the interior, the absolute necessity of preventing the colonization of Red River, because its "*success would strike at the very existence of their trade.*" He could have proved by the evidence of Pritchard and others, that in pursuance of these instructions, various devices were put in practice in order to prevent the settlers from obtaining supplies of provisions; that at the period when Governor Macdonell issued his Proclamation against the exportation of provisions, the North-West Company were engaged in buying up all that could be obtained at an advanced price, and actually did purchase much more than the usual supply required for their trade, for the express purpose of distressing the settlers (See Narrative of Mr. John Pritchard, lately published by Murray, Albemarle Street.) It might have been shewn that the seizures of provisions spoken of by Toomey, Swords, Wallace, Pinkman, and Vaudrie, were effected under lawful authority; and that if the North-West Company thought fit to dispute either the validity of Governor Macdonell's authority, or the propriety of its exercise, they had a legal course of redress open to them by petition to the King in Council: That in the month of June 1814, subsequently to these seizures, an amicable arrangement had taken place between Governor Macdonell and several partners of the North-West Company, (see at page 21, the testimony of Mr. John Pritchard, on the trial of Colin Robertson and others, and also the Narrative of John Pritchard, above referred to); and that the whole conduct of Governor Macdonell on the occasion afforded the clearest proof that he had no intention of distressing the North-West Company, or of occasioning any unnecessary interruption to their trade. It might have been shewn that after this arrangement tranquillity prevailed without interruption for several months: so that the facts related by these witnesses could not possibly be referred to as the cause of subsequent outrages. The Attorney-General could also have proved, that during the interval of tranquillity and without any farther provocation, the notorious Alexander Macdonell, then recently promoted to be a partner of the North-West Company, in a letter to one of his associates, declared that Duncan Cameron and himself were "*on their way to commence open hostilities against the enemy in 'Red River';*" distinctly alluding to the instructions which he had received to effect the "*downfall of the Colony by fair or foul means.*" (For the letter of Alexander Macdonell, dated 5th August, 1814, to his partner John Macdonald at Montreal, see page 11 of the Statement respecting the Earl of Selkirk's Settlement, published by Murray, Albemarle Street, 1817.) It might have been proved that in pursuance of this design the servants of the North-West Company were employed, during the subsequent season, in a series of unprovoked outrages, till they had effected the total destruction of the Settlement. that, in the course of these transactions, Duncan Cameron had committed himself so far, that three bills of indictment had

Chief-Justice. It certainly never was the intention of the Court to allow, on the one side or the other, former aggression to be brought forward as justifying aggression subsequently committed. We thought it right, under the circumstances of the case, to allow to be shewn, that from the determined hostility existing between those parties, in a country uncontrolled by any law, there was reasonable cause for either to apprehend, that wherever they met, the weaker would have to give way to the stronger party, and that therefore measures of unusual precaution were resorted to. It appeared to me and my Brothers, that the object of the Defence was to shew, that when this horrible event took effect, it resulted from one armed party, perhaps armed under unusual circumstances, being followed by another, who having arms at their command took them, and went out, (as they say,) merely to watch the movements of the mounted party, being apprehensive, from accounts which they had received, that this party came to act in a hostile

been found against him; that these trials had been referred to Upper Canada; that Duncan Cameron was at the time in the United States, but had not presented himself to take his trial. It might also have been proved, that after the return of the settlers to Red River, in autumn 1815, under the direction of Colin Robertson, they had taken no steps against the North-West Company, except such as were dictated by the necessity of self-defence. With respect to the arrest of Duncan Cameron in March 1816, and the subsequent demolition of his trading post, the Attorney-General might have produced the same evidence as on the trial of Colin Robertson, and others at Montreal (see page 17); and even more ample evidence, if necessary, to prove that these measures were not adopted till most unquestionable information had been received of the hostile designs of the North-West Company, and of the meditated repetition of the outrages of the preceding year.

Independently of the compromise between Governor Macdonell and the North-West Company in June 1814, and the consequent interval of tranquillity, the Attorney-General might have shewn that the destruction of the Settlement in 1815, must have been sufficient to appease any but the most insatiable vengeance. He might also have shewn, that of the half-breeds who were engaged on the 19th June, a great proportion had lived on terms of friendship with the colonists during the winter immediately preceding, and had expressed no feelings of hostility till Alexander Macdonell, by means of his emissaries, had contrived to get them assembled at River Qui Appelle, and there to inspire them with vindictive feelings, or hopes of plunder.

manner to the Settlement. In the state of mutual exasperation existing between them, murder ensued. It appeared to us to be fair to let it be shewn to the Jury by the Crown, that riding armed in numbers was not an unusual practice, and that therefore they might be afraid for the colony's safety, after the information they had received. On the other hand, as it was allowed to the Crown to shew what they could to sustain the setting out of this party with an hostile intention, it was thought to be fair to admit evidence that, owing to the constant aggressions which were committed in the attacks upon the property and persons of the traders belonging to these rival companies, it was necessary to protect their provisions by an armed escort. There was also another reason for allowing the Defence to go back, and prove, or rather trace, the irritations which existed, under the limitation of shewing a continued and unabated state of exasperated feeling, without cessation, for that time which the law or a Jury would consider necessary for the passions to cool, because, unless they were permitted to do so, the prisoners had not a fair opportunity of proving that which might, in the minds of the Jury, soften the crime whereof they are accused, to manslaughter. If a continued irritation is attempted to be sustained, it must be kept up without interruption, and if at any moment it was perhaps diminished, yet that fresh aggression and outrage not only prevented it from completely cooling, but rekindled all the angry passions, and again brought into play all the hateful feelings by which both parties appear to have been actuated towards each other.

The Solicitor-General submitted that the counsel for the prisoners ought not to be permitted to shew, that owing to a number of slight circumstances, it was probable, that irritation might exist, but that the force of them should be so powerful, that it was impossible to control the passions.

Chief-Justice. And a slight circumstance of aggression in itself, if often repeated, might have that effect.

HUGH SWORDS, *sworn.**Examined by Mr. LIVIUS SHERWOOD.*

Swords. I was formerly, and in the year 1814, in the service of the Hudson's Bay Company, at the Red River country, being sent out there from Ireland by the Earl of Selkirk's agent. I cannot say that I read, but I heard of a Proclamation issued by Miles Macdonell. I do not know that it forbade the sale of pemican by the hunters to the North-West Company, for I was not able to read the Proclamation. I know of a boat-load of pemican being seized by the Hudson's Bay people. It contained a quantity of ninety-six or ninety-seven sacks of pemican, of about ninety pounds each. I was one of the party sent to seize it by Mr. Miles Macdonell, and the party who went were all armed, with military guns, some with bayonets, and we had ammunition, consisting of ball-cartridge, served out to us before we went to seize it. I know that a camp was formed on the Ossiniboine River, and cannon were planted to prevent the North-West canoes from going down, and that this was done by the orders of Mr. Miles Macdonell. On this river the trade of the country is carried on. Pemican is the meat of the buffalo mixed with grease, and forms the general food of the traders of the country; and if the North-West traders could not get provisions from here (the Red River country), it was impossible they could carry on their trade, as they depended on a supply from here for other posts.

Cross-examined by the SOLICITOR-GENERAL.

Solicitor-General. Do you not always take arms with you, when you go out in that-country?

Swords. No; sometimes I have been out in the Red River country without arms, but we generally take them.

Solicitor-General. Was there any thing so particular in your taking arms when you went out at the time you have been speaking of, that you should so particularly recollect it?

Swords. I know that at that time we were served out with arms, and fixed ammunition; with muskets and bayonets, and ball-cartridge. I cannot say that all had them, but I know that I had. I never was a settler. I was a servant to the Hudson's Bay Company, and was stationed at Red River. I left their service, because I did not think I was well treated by them, and that I could better my condition.

Solicitor-General. Do you know any thing of the removal of guns from the Governor's house at the colony, to the North-West post in that neighbourhood, or of other private property belonging to the residents?

Swords. No, I do not. I heard afterwards that they were moved, but I did not see them moved.

Solicitor-General. Did you never receive any money from Mr. Cameron, Mr. M'Leod, or persons belonging to their party, for your conduct?

Swords. The gentlemen were good enough to give me twenty pounds for wrougthing in the canoes from Red River to Fort William, and to Montreal.

Re-examined by Mr. LIVIUS SHERWOOD.

Swords. It was in May 1814, that the pemican was taken. It was taken from the lodge of oné Poitras. The Hudson's Bay people were trained to the use of arms, but I do not know for what purpose. They had been exercised some months before the pemican was taken. It was not in a boat, but about a good cargo for a boat that we took, and delivered to Mr. Miles Macdonell. Before setting off, I and the others of the party were called up before the house of Mr. Miles Macdonell, and told we were going in search of provisions, which it was expected the North-West people were sending down the river; and if we found any, we were to take it by surprise if we could, and if not, by force, but we were to take it in any way. Not finding any, that day, we encamped, and Mr. Macdonell joined us the next day. Mr. Macdonell had a field-piece with him, and a number of men armed, and the cannon was placed so as to command the river. When before Mr. Macdonell's house, I was pro-

mised, that if we took provisions I should have four pounds, and others were promised two pounds, and some different sums.

Mr. L. Sherwood. Well, go on with your story.

Chief-Justice. There is no occasion; we have the fact, that it was taken and delivered to Mr. Miles Macdonell. It can be of no consequence how it was taken. It is evident they went prepared to take it by force, if it was not given up quietly.

Mr. L. Sherwood. I will then only put one more question. Had Mr. Macdonell any want of provisions at that time?

Swords. Mr. Macdonell could not be in great want of provisions, for it was fishing season.

WILLIAM WALLACE, *sworn.*

Examined by Mr. SHERWOOD.

Wallace. I have a knowledge of the Proclamation of 1814, by Mr. Miles Macdonell. I did not read it, but I heard it read. I was then a servant of the Hudson's Bay Company. I know of a boat-load of pemican being seized, about ninety-six or ninety-seven bags, and that it was seized by our people, under the orders of Mr. Miles Macdonell. I know that it was brought to our fort, and stored there, for I helped to carry it into the store. I know that there was a camp formed on the Ossiniboine River, and that cannon were planted on its banks. The general conversation was, that every thing was to be stopped that was going down the river.

JAMES PINKMAN, *sworn.*

Examined by Mr. SHERWOOD.

Pinkman. I was at Fort Pambina in the year 1813, and then, or in 1814, I saw a Proclamation posted upon the gate of the fort.

Mr. Sherwood. Should you know that Proclamation were you to see it again? or do you know what it was about?

Pinkman. It mentions about the free men and all the Canadians giving up their cattle to Mr. Macdonell.

Mr. Sherwood. Were provisions forbid or prevented from going down the river, as they had usually done before that Proclamation?

Pinkman. I know they were forbid, but I do not that they were stopped. I know of some being taken by the Hudson's Bay people, as I was at that time a servant of the Hudson's Bay Company.

Mr. Sherwood. What did Wallace, Swords, yourself, and the other servants, call Mr. Miles Macdonell?

Pinkman. We always called him Governor, all the servants did. In May 1814, I was sent from the Red River Forks to go, with some others, to Portage des Prairies, and from there we went to Brandon House. Mr. Spencer, whose orders we were under, went to the North-West fort near that place, and asked for their provisions, their pemican; I did not go myself with Mr. Spencer to the North-West fort. A few days afterwards, an answer was brought to a letter which had been sent from Mr. Spencer to Mr. Miles Macdonell, and we went to their fort. It was shut, and the gates were locked. We cut down the pickets, and got in that way, and then took the pemican and grease, and dried meat. There were about five hundred bags of pemican, and twenty-six kegs of grease, and some dried meat. Some of the bags were larger than others, but I dare say they might weigh about ninety pounds a-piece.

Mr. Sherwood. That would be something more than twenty tons, a pretty good prize, besides the grease and dried meat. Do you know of the Ossiniboine River being blockaded, so as to prevent the North-West Company from bringing their provisions by the channel of this river?

Pinkman. I do know that cannon were placed on the banks, to prevent the boats passing that belonged to the North-West Company. I know the North-West Company have a great number of forts and posts, and that

there is no other way to go to a good many of them, than down the River Ossiniboine.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. Pray, who went with you? who was at the head of the party?

Pinkman. Mr. Spencer was our master. A Mr. House also went, and three more, and I. There were only two and I, making altogether five.

Attorney-General. You perhaps do not know that Mr. Spencer went with a warrant as a Sheriff, or to make some proposals about the provisions?

Pinkman. I do not. I only know we went, and he was our master.

Mr. Sherwood. If it is pretended there was any authority of that kind, we are prepared to resist its legality. I thought, with the Governor all these mock officers had been given up.

Attorney-General. To any remarks of that kind I do not think it necessary to make any reply. I have neither given up nor maintained the legality of the powers exercised by the Hudson's Bay Company. On the abstract charge of murder, at present before your Lordships, I do not conceive I have any thing to do with them or their Charter. It was only merely as to a fact I asked the witness; whether he knew in what capacity Mr. Spencer went; when he told me that he did not, I was satisfied. Do you know how many men were in the fort at the time you went there?

Pinkman. I do not know positively; but I think about ten were in the fort, at the time we got in.

Attorney-General. And you were five; did they make any resistance to you?

Pinkman. No, except that they refused to open the gate, and we cut the pickets, and got in that way.

Attorney-General. Did you serve out your time regularly and fully in the service of the Hudson's Bay Company?

Pinkman. Yes, I did, I served my time quite out, and then left them.

Attorney-General. Do you know William Wallace? did he serve his time out, or did he desert whilst under a contract of service?

Pinkman. I know Wallace, and that he served his first contract out, for I saw it. He made another for a year, which I believe he did not serve out. I heard he did not, but that he left for bad treatment he received.

Attorney-General. You know Hugh Swords, did he break his contract?

Pinkman. I do not know whether he did or did not.

TOUSSAINT VAUDRIE, *sworn.*

*Examined through the Interpreter, by Mr. SHERWOOD,
[BALDWIN.]*

Vaudrie. I know the Indian territory well. I have resided in it upwards of thirty years. I know that the North-West Company were trading there when I first went, and have continued to do so as long as I have been there. They traded there before I went, but I cannot say for how long. On the Red River and Ossiniboine, I know that they traded long before the Hudson's Bay people; the Hudson's Bay traders have not been long in the habit of trading on those rivers; only a few years. I know by hearsay, and only in that way, of the Proclamation of Mr. Miles Macdonell. I know that in the year 1814, a quantity of pemican and dried meat was seized from the North-West Company's post on the River la Sourie, because I was there at the time. It was taken by the Hudson's Bay people out of a large *hangard*, (store,) and amounted to full four hundred bags; there must have been between four and five hundred bags, perhaps full five hundred, taken away. Mr. Spencer came to the fort, and knocked at the gate, asking to be admitted into the fort in the name of the King, and that all the pemican, dried meat, and grease, should be given up to him. Mr. Pritchard, who had charge of the post, refused to admit him, and took me, as a witness, that he did so. He asked

Mr. Spencer to wait a little while, which he did, and shortly Mr. Pritchard put a small billet through the pickets to Mr. Spencer, who took it, read it, (*witness being here asked if he knew the contents of the note, replied, I do not,*) and answered, "that will not satisfy me," and again demanded to be let in, which Mr. Pritchard again refused. Upon this refusal the pickets were cut down with an axe, and the party, headed by Mr. Spencer, entered. They asked where the provisions were kept, and Mr. Pritchard told them they might find them. They then went to the store, of which they broke off the lock, for it was locked up, and they opened it by drawing the staples and breaking the locks; they took possession of the provisions, consisting of upwards of four hundred bags of pemican, a number of barrels of grease, and a quantity of dried meat, which afterwards was all taken away by them. I was then in the service of the North-West Company, and at the fort on River la Sourie at the time, and saw it taken away to the Hudson's Bay fort on the other side of the river.

Mr. Baldwin. How long have you lived in the Indian country?

Vaudrie. I have lived there upwards of thirty years.

Mr. Baldwin. Did you ever see any vestiges or remains of old French forts in that country?

Vaudrie. I have seen several very old ones.

Mr. Baldwin. Do you know that they were frequented by the traders in the time of the French government?

Vaudrie. I have heard a very old man, who lives there, say that the Red River country was traded to in the time of the French government.

Mr. Baldwin. Do you know of similar remains of forts on the Swan River, which is farther North than Red River?

Vaudrie. I do not. I never was at Swan River.

Mr. Baldwin. Do you know which is the most northern post which the French traders had?

Vaudrie. I cannot say any thing about it, for I have lived, the whole thirty years I have been in the Indian territory, in the Red River country. I was never out of

it, but to come below. I never went higher up than Red River.

Mr. Baldwin. And when you first went to Red River, the Hudson's Bay people did not trade there, but the North-West Company did?

Vaudrie. Yes, the North-West people did frequent there, but the Hudson's Bay people have only come there few years back.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Vaudrie. I do not know if Cuthbert Grant can read, or if the half-breeds generally do read. I know one half-breed who can read.

DONALD M'DONALD, *sworn.*

Examined by Mr. SHERWOOD.

M'Donald. I was formerly a servant to the Hudson's Bay Company, but was not in 1816, at the time of the battle. We have no occasion for great guns in the chase. I do not know if our people learned the use of great guns. I did not act as a cannonier. Michael Heden acted as such; but I have helped to carry cannon from Red River to different places. I know they were, in 1814, placed on the banks of River la Sourie, to prevent the people belonging to the North-West Company from going down the river. I also know that cannon were planted at the Forks of Red and Ossiniboine Rivers, for the same purpose; and at the time they were placed there, Mr. Macdonell said they were to prevent the North-West from going down. I know that some of the people were taken at Turtle Lake, and I saw two chests of fire-arms brought to the fort, which it was said had been taken from the North-West Company. In the year 1814, Mr. Macdonell did not want provisions, he had plenty. I believe the Proclamation of Mr. Macdonell forbade the hunting of buffalo. The half-breeds were very much dissatisfied with this, as their only means of living is by hunting and fishing. Indeed, sometimes they have nothing to live on but what

they hunt, as you cannot always fish. The winters in that country are much longer and colder than they are in Lower Canada. The buffalo are consequently very poor, and not fit to eat in the spring. I do not know exactly what the order of Mr. Macdonell was, but I know the Bois-brulés were very much offended at it.

MARTIN JORDAN*, *sworn*.

Examined by Mr. LIVIUS SHERWOOD.

Jordan. In the year 1814 I was in the service of the Hudson's Bay Company, and came out by way of Hudson's Bay. I was stationed at the Forks of the Red River, which are formed by the River Ossiniboine falling into the Red River. The place was in possession of Mr. Miles Macdonell. I know that cannon were placed there by his orders, for I assisted in placing them. I know also of the Proclamation issued by Mr. Macdonell, and the cannon were placed for the purpose of enforcing the Proclamation, and preventing the North-West Company from taking provisions down the river in their canoes and boats. I was ordered by the Governor from Hudson's Bay, Governor Auld, to obey Mr. Macdonell, and he directed me to help to put the cannon there, and to assist in stopping the boats. I was present when provisions taken from the North-West Company were put into the store at our fort. I was to have been one to have taken it, but the party that set out afterwards divided into several, and the provisions did not happen to come my way, so it was taken by another party. I was at Fort Gibraltar when a quantity of small arms were taken by our people from the North-

* This man was in the service of the Hudson's Bay Company when he arrived at Montreal, but having been detained a considerable time there, in consequence of unexpected delays, he got into expensive and irregular habits, and contracted debts to a large amount, for which his creditors arrested him. The agent for the Hudson's Bay Company did not think fit to assume debts so improperly contracted. Jordan vowed vengeance; and was soon after liberated by Mr. Henry M'Kenzie, an agent or director of the North-West Company, who discharged his debts.

West Company, and carried to our fort*. I know of Mr. Macdonell's order for preventing the hunting of the buffalo, and that the half-breeds, Indians, and North-West people, were very dissatisfied with it. I understood that the Hudson's Bay people were not very well pleased with it. I was present at the taking of Fort Gibraltar. Before we went to take it, I was called in by Mr. Robertson to his house, and asked if I would like to know a secret, and I said I did not know but I would. He then told me he was going that night to seize on the fort belonging to the North-West, called Gibraltar, and asked me if I would like to go. I said yes, I would have no objection. Shortly after we fell in, and marched up to the fort, and took it. This happened in March. We kept possession of it for three months, and then it was destroyed. We, who had taken it, stood in defence of it, not wishing it to be pulled down, but Governor Semple insisted upon its being destroyed, and took Mr. Robertson and me prisoners, because we opposed it. All the materials that could be, were floated down to the Hudson's Bay fort, and those that could not, were burned, as I understand, a few days before the battle. I cannot positively say that it was just before the battle, because I was not at it; but it was the beginning of June that the fort was destroyed, as I believe. I was never but once before under arms myself, and then it was to way-lay the North-West people at Portage des Prairies, a few days before Fort Gibraltar was taken. I was on that occasion with Mr. Semple, but the provisions that were stopped were taken by Mr. Robertson. Cannon were prepared, and horses were kept ready to tackle, if there should be occasion. The settlers, as well as the servants, were exercised and trained to the use of arms; and on the day we went to take Fort Gibraltar, we fell into the ranks like soldiers.

* That the arms here alluded to were not the property of the North-West Company, but a part of those which had been taken by them, on the destruction of the Settlement in 1815, ought to have been shewn by the Attorney-General.

Mr. L. Sherwood. It appears by your statement, that Governor Semple always kept you prepared to receive the North-West people, any time they might happen to be passing?

Jordan. Yes, we were always in a state of readiness to receive them any time they came.

Mr. L. Sherwood. What did you understand to be the object of your, or the people generally, being trained to the use of arms?

Jordan. I understood that it was to stop the North-West trade by force of arms. I heard the Governor and Mr. Robertson say, that he would stop their boats by force of men and arms. I never heard any orders that we were to fire upon them, but that the trade should be stopped, and the navigation, and that the *provisions should be taken**, [*men should be taken prisoners*]. I did not, very soon after the battle, see any of the Hudson's Bay people. I did some time afterwards, but I did not inquire who fired first. I heard them talk generally of the battle, but not as to who fired first; but in flying reports, I heard that the Hudson's Bay people did.

Mr. L. Sherwood. Pray, was Mr. Holte in charge at any place?

Jordan. No, Mr. Holte was not in charge any where.

*Cross-Examination, conducted by the ATTORNEY-
GENERAL.*

Attorney-General. You mentioned that you was once, under arms to way-lay the people belonging to the North-West Company; will you tell us what orders were given you on that occasion, or why you think that was the object of your learning the use of arms?

Jordan. We set out determined not to come back without satisfaction. Our orders were to get [*back*] all the North-West property we could, and if we got it, that it should never be let return again.

* The provisions here alluded to were those which had been taken from Pambrun, (see page 71,)—which are also alluded to on the cross-examination (p. 78, 79; and 80).

Attorney-General. Did you happen to have heard of the destruction of property at Brandon House, and that the property belonging to Mr. Fidler (his own private property), had been just before destroyed, and taken by the people you were expected to meet?

Jordan. I had certainly heard that Brandon House had been pillaged, and that a little property belonging to Mr. Fidler had been destroyed.

Attorney-General. Do you happen to know whether Mr. Fidler had been in charge, or lived at Brandon House, some time before Fort Gibraltar was destroyed?

Jordan. I believe that before the fort was destroyed, Mr. Fidler had lived at Brandon House.

Mr. L. Sherwood.—Do you not know that the colonists fired upon the half-breeds in the year 1815?

Attorney-General. If, my Lord, the witness is permitted by the Court to answer that question, I shall have to shew that in 1815, and long before that period, there had been firing upon the colonists.

Chief-Justice. It appears to me to be not only irregular, but idle, to go into evidence upon the subject. Enough has been shewn on either side, to prove that the object with each party was to harass the other, and in so doing, that they were in such bad blood as to be disposed almost to exterminate each other.

ANTOINE LA POINTE, sworn.

Examined by Mr. SHERWOOD, through the Interpreter.

La Pointe. I have resided fifteen years in the Indian territory. I know that Fort Gibraltar was taken by the Hudson's Bay people, for I was in it when it was taken; being then, as I am now, and have been for fifteen years, in the service of the North-West Company. It was a party headed by Mr. Colin Robertson who came to take it, and he is, as I believe, a servant of the Hudson's Bay Company. I take him to be a servant of that Company, because he always staid at their fort. I was not at Fort Gibraltar when it was pulled down, and sent to the Hud-

son's Bay fort. I know that before Fort Gibraltar was taken, cannon had been placed at the Forks to prevent our people from passing up and down the river. I know also that Mr. Miles Macdonell gave orders to prevent the half-breeds and others from hunting buffalo*.

Mr. Sherwood. Ask him, Mr. Smith, if he knows whether the Indians and Bois-brulés were contented or satisfied that they might not hunt on their own ground. (*The question being put in French by the Interpreter, was answered by the witness, "Ils n'étoient pas trop contents," which Mr. Smith translated,*) they were not overpleased : they were dissatisfied.

Mr. Sherwood. That is not near so forcible an expression as the one made use of by the witness. Your Lordships will, I doubt not, notice the answers of La Pointe to my question. "*Ils n'étoient pas trop contents,*" a very strong and forcible expression in the French language, remarkably forcible; at least going the length of absolute aversion. But I have no doubt your Lordships will remember the expression, as shewing that the order was never assented to, but, on the reverse, created great discontent.

Chief-Justice. We have been told so twenty times.

La Pointe. I was not at the Frog Plains on the 19th June, but I was at Portage des Prairies when the half-breeds set off to go to Frog Plains. I heard their orders

* This order is misrepresented here, and in several other parts of the evidence for the Defence. In the evidence on the trial of Colin Robertson at Montreal (see page 15,) it is proved, that this order was not to prevent the half-breeds and others from hunting buffalo, but to prevent any persons, except Indians, from hunting them *on horseback*, a practice which was beneficial only to a few individuals, who had better horses than their neighbours, but was very detrimental to the hunters in general. It was proved that this order was issued at the recommendation of the partners of the North-West Company themselves : but these gentlemen immediately availed themselves of it to misrepresent the conduct and views of Governor Macdonell, and to excite the jealousy of the half-breeds and other inhabitants of the country.

given; they were to go to Frog Plains with a quantity of provisions to meet the canoes that were expected daily from Montreal and Fort William. This was the only object of their going, and I know of no other orders being given when they started. They took two carts loaded with provisions. They were ordered to keep very far away from Fort Douglas. They came to Portage des Prairies in boats and canoes, but did not keep on in them, because they knew the colonists would stop them at the fort, and take their provisions from them, and the directions they received was, to go as far from the fort as possible, to avoid being seen by the colonists.

Mr. Sherwood. We have heard a great deal about this party being painted and disfigured, and their going in a warlike array. I wish to know how Cuthbert Grant, who is represented to have been their leader, was dressed?

La Pointe. Cuthbert Grant was dressed quite in the ordinary way, much as I am at present.

Mr. Sherwood. Was he painted or disguised at all?

La Pointe. No, he was not.

Mr. Sherwood. Was there any preparation of a warlike kind, or any more than is ordinary to a party going through the country?

La Pointe. I saw nothing of any preparation, beyond what is usual to a party riding through the country.

Mr. Sherwood. Do you believe they intended to go quietly past Fort Douglas, if they were allowed to do so?

La Pointe. I do think they would have passed it peaceably.

Mr. Sherwood. Why do you believe so?

La Pointe. It was their intention, and they told their employers (*bourgeois*) that they would, when directed to pass at a distance.

Mr. Sherwood. Do the Indians and half-breeds only paint when they are going to war, or on other occasions, or is it a sign of war?

La Pointe. It is their custom to paint on different occasions. It is not a sign of war at all.

Mr. Sherwood. You have told us that you saw carts at the starting of the party from Portage des Prairies: did you see any cannon in them, or what did you see in them?

La Pointe. I am quite sure that there were no cannon in them, nor any thing except provisions (*taureaux*).

Mr. Sherwood. Was there any way by water from Portage des Prairies to the Frog Plains, except that by Fort Douglas?

La Pointe. There was not, and they could not go that way for fear of being stopped.

Mr. Sherwood. And witness, on his oath, believes they intended to pass Fort Douglas peaceably, if they had been permitted*?

La Pointe. Certainly, I believe it. Upon my oath, I believe it.

Mr. Sherwood. Why do you believe it?

La Pointe. Because they promised their masters they would.

Mr. Sherwood. A better ground for believing it could not be had, as is well known to those acquainted with the respect these people pay to their employers.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. What quantity of provisions were taken, and how many carts were sent to carry them?

La Pointe. There were thirty bags put into the carts. Three carts went with it.

Attorney-General. Do you know whether any, and what part of these provisions was brought from Qui Appelle?

La Pointe. I do not know whether any was brought or not.

Attorney-General. Do you know, or do you not know,

* According to the designs of Cuthbert Grant, as explained by himself to Pritchard (see pages 86 and 87,) the servants of the North-West Company having attempted to pass the fort unobserved, affords no proof of pacific intentions.

that the greater part of the pemican at Portage des Prairies, had been taken a short time before by the North-West people from Mr. Pambrun?

La Pointe. No, I do not know that it had.

Attorney-General. Who was it that, at Portage des Prairies, told the people to take the provisions, and gave them no other directions than to avoid the fort?

La Pointe. It was our employers that said so. I staid at Portage des Prairies. I staid there about seven or eight days, and then all the things went down to the Grand Portage. The Bois-brulés were not generally painted when they set out. I did not hear of an attack being intended to be made on the fort, or that it was proposed to starve out the Settlement.

JEAN BAPTISTE ROY, *sworn.*

Examined by Mr. SHERWOOD, by Interpreter.

Roy. I was not upon the battle-ground upon the 19th June, but at my own place, which is about a league distant. I have lived there about twelve years. In the month of March, I was at Fort Gibraltar, when it was taken by the Hudson's Bay people. I was there upon a visit, and not as a servant, for I am a free man. They came about eight or nine o'clock at night, and made prisoners of a number of the residents. I do not know how the prisoners were treated, for I went away directly. I had not far to go to my own place, only just across the river. I went to Fort Gibraltar afterwards, and was present when the people belonging to the North-West Company were sent away. They were sent off by the Hudson's Bay people.

J. B. BRANCONIER, *sworn.*

Examined by Mr. SHERWOOD, by Interpreter.

Branconier. I know that Fort Gibraltar, situated near the Forks of Red River, was taken by the Hudson's Bay people. I was there at the time, in the service of the North-West Company, and was wounded by one of the party who

took the fort, but I am not sure by whom. The conduct of this party, who took possession of the fort, and wounded me, was violent and outrageous, beyond any thing I ever witnessed; so much so, that I was afraid we should be all murdered by them; they put pistols to our heads, and threatened to blow our brains out; indeed all manner of violence and outrage was committed. I was taken to Hudson's Bay, but not as a prisoner, and from there, after stopping a long time, I was sent to England by Mr. Robertson.

Mr. Sherwood. Do you know for what reason you was sent to England?

Branconier. No, I do not; I understood it was something about Mr. Cameron, but I do not know. I did not go willingly. I was liberated the moment I got to England. I never heard any thing there of any prosecution.

Mr. Sherwood. Do you know any thing about Fort Douglas having afterwards been taken?

Branconier. No; I was gone before that happened.

The Hon. Wm. B. COLTMAN, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Colman. I last year proceeded into the Indian country as far as Red River. I left Montreal in the month of May, at the time the traders generally proceed to the interior. The authority under which, as well as the objects for which, our journey was undertaken, (for I was accompanied by my colleague,) are pretty fully set forth in the Proclamation of His Royal Highness the Prince Regent, notifying the appointment of myself and Mr. Fletcher as Commissioners.

Mr. Sherwood. In the course of your official duties, I presume, Sir, you must have had communication with the class of persons known in the Indian territories by the appellation of Bois-brulés or half-breeds. Will you, Sir, be so good as to tell us what character and rank they hold in society; whether they are considered as Indians, or as

white people; what is their disposition generally, or what station do they fill?

Mr. Coltman. I have certainly had occasion to see the half-breeds or Bois-brulés, as they are generally called in that country; but it is a question rather difficult to answer, to what class they particularly belong. The half-breeds are of various kinds, but all the progeny of Indian women, living with their mothers, but varying in character, information, disposition, and manners, according to the peculiar circumstances in which they may have been placed with reference to education, and numerous particulars. Some have been sent to Montreal for education, and some even to England. I believe these are not very far removed from white men; but the advantages they have enjoyed are so various, that they may be considered as filling every link, from the character of pure Indians to that of cultivated men; and I had occasion to communicate with half-breeds of very different classes, in the performance of my official duties. I was accompanied to the battle-ground of the 19th June by some of the half-breeds. I should wish, however, to be permitted to relate my design in going. An investigation into that melancholy occurrence certainly formed a leading object of my inquiries. Upon my arrival at Red River it appeared, from the representations made by numerous persons, that great doubt existed as to who were the assailants, whilst, from every representation, the degree of culpability attaching itself to different individuals, impressed my mind very differently. The information generally corresponded, though from various persons, in the accounts of the numbers that were engaged, as also of those that fell in the conflict on both sides, viz. that of the half-breed party there were about sixty or seventy on the Plains, and that one servant only was killed, whilst the party of Mr. Semple had consisted of about twenty-five or six, of whom nearly the whole lost their lives. I wished very much to obtain correct information as to who were the assailants, that the degree of culpability in this unfortunate occurrence might be ascertained. Con-

sidering it my first duty to get information on that point, I did go with a party of half-breeds to visit the scene of this melancholy affray. I saw at that time the impression of carriage-wheels; the impressions were faint, but I did see them, and they were pointed out to me as marking the route of the party on the 19th June.

Mr. Sherwood. Did any of the Hudson's Bay people accompany you to the Plains?

Mr. Coltman. Mr. Nolin and Captain de Lorimier, I believe, joined me from Fort Douglas.

Mr. Sherwood produced a diagram of the scene of action, with its vicinity, and also shewing the route by which the half-breed party passed, which was handed to Mr. Coltman, and his opinion being asked as to its correctness generally,

Mr. Coltman. The diagram appears to me to be perfectly correct as to the ground where the battle was fought, and also of the vicinity; but I cannot speak so positively as to the track marked as taken by the horsemen and carts.

During the time that Mr. Coltman was examining the plan presented by Mr. Sherwood, the Crown officers had been occupied at another, which had also been sketched on the spot, by a gentleman connected with the Hudson's Bay Company.

Mr. Sherwood. Did the parties agree as to the route taken?

Mr. Coltman. They did generally, but not entirely so.

Mr. Sherwood here intimated that he had no objection to Mr. Coltman's receiving the second diagram at the present moment, and comparing them, as, if there was any difference between them, he could point it out, and decide which was a correct one, so that it might go to the Jury for their information.

Mr. Coltman declared that he considered the sketches, as far as the ground plans were concerned, correct. Relative to the track of the carts, and the route of the horsemen, in which the two plans did not precisely agree, Mr. Coltman declined speaking positively, stating his difficulty to arise from its being in very dry weather that he visited the

spot, whereas he understood it to have been completely mire at the time of the party passing on the 19th June).

Mr. Coltman. The half-breeds told me when on the spot, that there was a swamp at the back of the road, in which their horses were up to their bellies, and that therefore they were obliged, on the 19th June, to take that route which is marked on this plan (that of Mr. Sherwood). The other side told me very nearly the same, as far as I recollect*; but if the Court will excuse me while I look for my Minutes of Mr. Nolin's observations, I may perhaps shew the difference. (Mr. Coltman, having looked among his papers for a short time, said he could not find his note of Mr. Nolin's remarks). But my impression is, that he told me that the Indians informed him shortly after, and that he, as I understood him, believed them, that they went as far from the fort as the road would allow†.

After some remarks, in the nature of a conversation, between the Gentlemen engaged in examining the diagrams,

* Mr. Coltman's recollection appears to be on this occasion surprisingly defective. Among the persons on "the other side," to whom he here refers, was Mr. Peter Fidler, whose affidavit, sworn and filed before Mr. Coltman himself, distinctly states, "that if the said half-breeds, and other
"servants of the North-West Company, had thought fit to pass at a greater
"distance from Fort Douglas than the said route, there was no natural
"or other impediment to prevent it. That the ground was, and is, equally
"passable for horses and carriages at any distance, from half a league to
"half a dozen leagues back of the fort, as in the route chosen by the said
"half-breeds and other servants of the North-West Company, and would
"have afforded, any where within the said distance, a road easy and
"without obstructions."

Mr. Fidler's testimony is the more deserving of attention, as he is a practical surveyor, and in that capacity has had much practice in exploring and delineating various countries in the interior previously unexamined, and had also resided many years at Red River, so as to be well acquainted with that country in particular. It is singular that Mr. Coltman, when on the spot, and giving credit to this account of swamps and marshes, which his own eyes could not distinguish, did not take any means to ascertain their extent, and how far the half-breeds must have gone out of their way, in order to pass beyond them.

† It is a curious proceeding in a Court of Justice to seek for hearsay evidence from this Magistrate, when Nolin, the person alluded to, was present, and might have been examined as to what he actually knew.

the Court retired for a few minutes; upon resuming their seats, Mr. Coltman not having returned, it was understood the Crown officers would cross-examine him afterwards.

NICHOLAS DUCHARME, sworn.

Examined by Mr. SHERWOOD, by Interpreter.

Ducharme. I know that the battle-between the North-West people and Mr. Semple's, was fought upon the 19th June, 1816. I know Paul Brown, (*he pointed him out at the bar,*) and he was not in that battle. I was encamped below the Frog Plains, *at the time of the battle.* Upon *hearing the firing I went down to Frog Plains,* to meet the people who were to come there, and in going I met Paul Brown, who had just arrived with a cart and a load of provisions. The firing continued some time after I met Brown, and he was with me all the time till it was completely over, and I am therefore sure that he was not in the battle.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. How many Bois-brulés did you see arrive at first?

Ducharme. There were only two Bois-brulés arrived at first. They came about sun-set. The large party came about dusk in the evening. It was after the battle, for I did not see the party of Bois-brulés till after the battle at the Plains.

Attorney-General. Did you see any of the colonists prisoners at the plains?

Ducharme. I did see some of them at Frog Plains, but I do not know if they were prisoners or not. I did not see Cuthbert Grant, but I did see Boucher after the battle.

Attorney-General. Had you any conversation with him about the battle at that time?

Ducharme. No, I had not; I only saw him.

Chief-Justice. Where were you at the time of the firing?

Ducharme. I was encamped below the Frog Plains.

Chief-Justice. How came you to meet Brown?

Ducharme. I had heard before that the party were coming, and I had gone up along the river to meet them, and there I met Paul Brown, the prisoner, and we staid together till after the firing was over.

Mr. COLTMAN, being in Court, was then cross-examined by the ATTORNEY-GENERAL.

Attorney-General. Was it common or ordinary for battles to take place in that country, Sir, and for twenty persons to lose their lives; or did you on any other occasion hear of a number of persons being killed?

Mr. Coltman. I certainly on no other occasion heard of so great a number of persons losing their lives, though I did hear of affrays, and of their being carried on with considerable violence by both parties, but not at all equal in extent to this of the 19th June.

Attorney-General. Did it approach to such a state of conflict, that war might be said to exist in that country?

Mr. Coltman. From all that I heard in my official capacity, and in other ways, I certainly did consider that a state of hostility existed in that country very similar to a private war; and as I have before stated so officially, I cannot but at present repeat, that from all I heard and saw, I do consider the state of that country was almost equivalent to a state of war, though I certainly never heard of any thing that in extent could be compared to the affair of the 19th June.

Attorney-General. Did you, Sir, ever hear of a number of persons losing their lives, except in that instance, or of any other like it?

Mr. Coltman. I cannot say that I ever did hear of a number of persons losing their lives, nor did I, although I have heard of other violences being committed, ever hear of any at all equal in extent or degree to that of the 19th June.

Attorney-General. Did you, Sir, ever hear of any lives being lost on the side of the North-West Company, or of any having been taken by the people belonging to the Hudson's Bay Company, or the colonists, or of any affray

in which any lives were lost, except that of the 19th June?

Mr. Coltman. I understood that there had been a previous affray at a place called Isle à la Crosse, and that on each side a life had been lost in it.

Attorney-General. Was that affray begun by the Hudson's Bay people, Sir?

Mr. Coltman. I saw a letter relative to that affray, which was proved to be in the hand-writing of Mr. House, the person in charge for the Hudson's Bay Company at that post, in which Mr. House admitted that their party were to blame. This letter I returned with other documents; it may perhaps be produced, but it appeared to me that the fault, though perfectly unintentional on his part, was attached to their party.

Attorney-General. This probably, Sir, took place some years before; it could, at any rate, have no influence over, or connection with, this outrage of the 19th June.

Re-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. You, Sir, I take it, are that William Bachelor Coltman mentioned in the Prince Regent's Proclamation?

Mr. Coltman. I am, Sir.

Mr. Sherwood. And by that instrument yourself and colleague, Mr. Fletcher, were appointed Commissioners for inquiring into the difficulties existing in the Indian territories. You then, Sir, I believe, became the only magistrates having a right to act, with respect to offences committed in that country?

Mr. Coltman. It would be rather difficult for me to answer that question, as it involves (as I conceive) a legal point which I may not be adequate correctly to decide.

Mr. Sherwood. It is of no consequence, Sir. I will ask you, Sir, do you know Mr. Cuthbert Grant, of whom we have heard so much? Did you meet with him in the Indian territory?

Mr. Coltman. I did meet with Cuthbert Grant whilst I was in the Indian territory; he surrendered himself to

me, to be brought to Lower Canada, to answer any charges which might be brought against him.

Mr. Sherwood. What was the character of Grant, Sir, generally, in that country? had he a good or a bad character?

Mr. Coltman. Mr. Grant was certainly a zealous partisan on one side, and, from his situation, it was perhaps inevitable but he should be so. Relative to the unfortunate disputes which existed in that country, he was very prejudiced. In other respects, according to general report, he had a very good character, as far as I ever heard.

Mr. Sherwood. Did you ever have occasion to know any thing of his conduct on the 19th June, as to whether he killed a number of persons, or was desirous of saving the lives of those who survived the battle?

Mr. Coltman. I heard his humanity in preventing deaths after the battle, generally spoken to. It was, as I think, spoken of in terms of praise by both parties.

MICHEL MARTIN, *sworn.*

Examined by Mr. SHERWOOD, through the Interpreter.

Martin. I was present at the battle on the 19th June, between Governor Semple and the half-breeds. I was one that came down from Portage des Prairies, having first joined Mr. Macdonell at Qui Appelle fort.

Mr. Sherwood. Did you hear any speech made by Mr. Macdonell to the Indians or half-breeds, or both together, at Qui Appelle?

Martin. No, I did not. I never heard any, or of any being made.

Mr. Sherwood. Do you think that if any had been made, you would have heard it, or of it?

Martin. Yes, certainly, I think I should.

Mr. Sherwood. Do you know if there was a Mr. Pambrun at Fort Qui Appelle, and would not you be as likely, and have as good a chance to hear one as he would?

Martin. I know that Mr. Pambrun was there, and think I should have been as likely to hear it as he could

have been; but I did not hear any, nor do I believe that any was made. On our way we met another party of Indians, and a speech was made to them, as is usual when parties meet.

Mr. Sherwood. Was it to advise ~~them~~ to go to war, or to join you in going to Portage des Prairies in a war party?

Martin. I heard nothing about war. In going to Portage des Prairies I do not know what the intentions of the others were; but I was going with provisions to carry them down to meet other canoes. I have heard, and I understood, that we could not pass by water, because cannon were placed on the banks of the river to prevent us, and for that reason we went by land from Portage des Prairies.

Mr. Sherwood. At what distance did you pass Fort Douglas?

Martin. We were a good way from the fort; so far, though we could see it; we could not distinguish people coming out of it.

Mr. Sherwood. After you had passed the fort, what occurred?

Martin. As we were going down we were near the river, and being thirsty, some of us stopped, perhaps about five or six, to get a drink. I was one that went to the river, and while there, I was asked by a colonist what I wanted.

Mr. Sherwood. What, might not you drink at the river any more than fish? what was said to this person?

Martin. The man was asked if he would go with us to Frog Plains; he was at work in his garden, and I took him to be a settler or colonist.

Mr. Sherwood. Had you any disposition to hurt the Settlement?

Martin. There was not any, not the least.

Mr. Sherwood. When did you first see the armed party?

Martin. We were about a mile and a half, or half a

league, from them when I first saw them, and they gave a shout of joy directly, and immediately after I heard a report of a gun from their party. Those of us who had been down to the river to drink, continued on their route towards Frog Plains, and the English Governor Semple and his party pursued us. When we found ourselves pursued by Mr. Semple's party, we sent one or two that were with us forward to the Frog Plains, to inform the others that we were pursued, and the Bois-brulés returned; and I saw one of my party going to speak to Governor Semple's party. I was not quite close to where he was, so that I did not then know who he was. I presently heard a report of a gun, and immediately after they (the English) fired another. As soon as the second gun was fired, I saw Boucher, the prisoner, fall from his horse. I thought that he was killed. At the third gun all the guns fired; after the volley I heard that one of our people was killed. I did not see him then, but afterwards I saw his body. It was one Batoche, a half-breed; the battle continued for about half an hour afterwards, and then stopped. I saw an Indian kill Governor Semple, known by the name of Fils de la Corneille (son of the Crow).

Mr. Sherwood. Was he esteemed a bad Indian?

Martin. I do not know that he was thought a bad Indian.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. You think it impossible that a speech should have been made at the party starting, because you did not hear it?

Martin. I think, if one had been made, I must have heard it.

Attorney-General. When Mr. Macdonell set off with you, did you hear any speech made to the half-breeds and Indians?

Martin. Mr. Macdonell did make a speech to some Indians we met, but I do not think any was made to the Bois-brulés. I did not hear any, I am sure.

Attorney-General. Do you know if any were killed after the battle, that were only wounded in it, Governor Semple, or any other?

Martin. I do not know if any wounded were killed after the battle. Mr. Semple was wounded and killed in the beginning of the battle. (*The question being repeated, the witness gave the same answer.*)

Attorney-General. Did you have any share of the plunder?

Martin. I did not take any.

Attorney-General. You know plunder was taken, I suppose, and that the people were sent away?

Martin. I saw an inventory making of the things at the fort, and I know the people went away, but I do not know that they were sent away.

Attorney-General. Do you know they were not sent?

Martin. I was at the Forks, where I went after the battle, and remained there two days; and when I returned to the fort, I found they were gone.

Attorney-General. How many did your party consist of?

Martin. There were forty, more or less, of the Bois-brulés.

Attorney-General. Where were Governor Semple's people at the commencement of the battle? were they together or dispersed?

Martin. At the beginning of the battle, Mr. Semple's people were collected together; when I first saw them, they were in ranks marching.

Attorney-General. Can you say what passed between Governor Semple and Boucher at the time of the challenge?

Martin. From the distance at which I was, I cannot.

Attorney-General. How did the firing begin?

Martin. A little moment after hearing the second gun, I saw Boucher fall from his horse; it was just after the second gun, and I am positive they both came from the ranks of the English.

Attorney-General. How do you know that?

Martin. The smoke and the report came from the English, I am sure.

Attorney-General. Did you see Paul Brown at the battle?

Martin. No, I did not.

Attorney-General. Do you know of any more than Batoche being killed?

Martin. No, I know but of him on our side.

JOSEPH LORAIN, *sworn.*

Examined by Mr. SHERWOOD, by the Interpreter.

Lorain. I went down with the people from Portage des Prairies to Frog Plains before the battle. Our instructions were to conduct provisions, and I drove a cart loaded with provisions.

Mr. Sherwood. Was it your intention to pass Fort Douglas, and avoid difficulty?

Lorain. It was from the first, and we did pass as far from it as we could; the swamps would not allow us to go farther.

Mr. Sherwood. Was there any intention to injure the colonists?

Lorain. There was not any; we passed the fort without any hindrance.

Mr. Sherwood. Did you see Mr. Semple and his party come out of the fort?

Lorain. We had got too far by, to see them come out, but I saw them afterwards.

Mr. Sherwood. Do you know which party fired first?

Lorain. I do not, for I was not in the battle myself.

Mr. Sherwood. Do you know, or believe, of any injury being done to them before the battle?

Lorain. I do not, nor do I believe any injury was done to them before the battle.

Mr. Sherwood. Why did you not go by water?

Lorain. I understood before parting, that if we went by water, our party were to be fired upon from Fort Douglas, and we were afraid to go by water for that reason.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. Where was you during the battle?

Lorain. I was at Frog Plains, and did not go away from there till after the battle.

Attorney-General. Did you never hear Cuthbert Grant speak of an intended attack upon Fort Douglas ~~on~~ the Settlement?

Lorain. I never did hear Grant speak of it.

Solicitor-General. Where was you when the firing began?

Lorain. I was at the Frog Plains when the firing began.

Solicitor-General. Who was there with you?

Lorain. Bellegarde was there, and Paul Brown, but I was not with Paul Brown, I was under my cart. Brown and Bellegarde were together. Bellegarde came there before Brown.

ALEXIS BERCIER, *sworn.**Examined by Mr. SHERWOOD, by the Interpreter.*

Bercier. I was below the Frog Plains on the day of the battle; when I heard the firing, I came to the Frog Plains, and on coming there I saw Paul Brown. He was not in the battle: he was engaged with his horse when I came. Ducharme was with me; we continued there till the firing had ceased.

Mr. Sherwood. And it is from these circumstances you undertake to say Paul Brown was not in the battle?

Bercier. It is; he was not there.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. Did you see any armed men at the Frog Plains before the battle?

Bercier. I did not. I do not know of any person being made prisoner before the battle. I saw one person lying down. I do not know that he was a prisoner; there were no Bois-brulés with him.

Attorney-General. How many Bois-brulés did you see?

Bercier. I saw only two, and then I saw at the Frog Plains. When I heard the rest were coming, I got on my horse and went away.

Attorney-General. Had you any conversation with Cuthbert Grant or Paul Brown?

Bercier. I had not with either of them there; next day I was at the fort with fish, and I gave Brown some.

Attorney-General. How did Brown come to Frog Plains?

Bercier. Brown came there in a cart, and it was the only one I saw there.

WINIFRED M'NOLTY, sworn.

Examined by Mr. SHERWOOD.

Mrs. M'Nolty. I was near the fort on the day of the battle. My husband was a servant to the Hudson's Bay Company for a year, for his passage, and then a settler at the colony. I saw Governor Semple's party go out of the fort armed with guns. I guess there were fifteen to twenty of them. The guns had bayonets. I had occasion to speak with Holte before they came, and often [after] with Heden. Mr. Holte said, if the half-breeds came, who were hourly expected, they would have their pemican or their lives. He said, if they did not give up their pemican, they would take their lives. The party went out, as if they were going to battle. Michael Heden and Michael Kilkenny said, on their return from the field of battle, that they could not blame the half-breeds. They said, "we cannot blame the half-breeds, we fired first, and " if we had got the better, we would have served the " half-breeds the same." They both said so.

Mr. Sherwood. Is Michael Heden, whom you speak of, the man who has been examined here as a witness?

Mrs. M'Nolty. It is the same person*.

* It is one of the fundamental principles of English judicature, that every offence should be brought to trial in the same vicinity in which it took place: and the reason assigned for this is chiefly because the cha-

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. Did you hear the half-breeds say why they drove away the settlers?

Mrs. M'Nolty. I have heard some of the half-breeds

acters of the different witnesses, and the credit due to each, will be best appreciated by a Jury of the neighbourhood. This principle is entirely violated by the Canada Jurisdiction Act, by which the trials here reported, were brought away to the distance of many thousand miles from the residence of the parties and witnesses. It is a natural consequence of such an arrangement that the evidence of the most distinct, consistent, and respectable witnesses may be discredited on the testimony of persons of infamous character. Hugh Bennerman, who is here brought forward to discredit Heden's evidence, left Scotland, at the expense of his parents, for the express purpose of preparing a habitation for them, and of planting a crop for their use, so that when they should arrive the ensuing year at Red River, they should find the means of subsistence ready for them. Instead of attending to this duty, Bennerman attached himself to the North-West Company, more anxious to participate in Mr. D. Cameron's donations of rum and shrub, than to provide for the wants of his relations. He was one of the foremost in all the aggressions committed by the partisans of the North-West Company, against those of the settlers, who did not choose to join in their measures, not only neglecting his own allotment of land, but preventing others who were well disposed, from cultivating theirs; exerting himself in this manner to create a famine in the Settlement where his aged parents, and his infant brothers and sisters were to his knowledge in the ensuing winter to seek an asylum; and when he had seen the place laid waste, made his escape in the canoes of the North-West Company, leaving his parents to struggle as they best could through the difficulties, which he had assisted in bringing about.

Mrs. Winifred M'Nolty is the wife an Irish labourer, upon whose testimony no one who knew the parties would rely in opposition to Heden's. In her cross-examination on the subsequent trial of Brown for robbery, she acknowledges her malice against Heden, on account of her belief, that the latter had charged her before Governor Macdonell, with stealing some articles out of the stores of the Settlement. It was evidently of the first importance to the prisoners, to shake if possible the credit of so material a witness as Heden. Had it been competent to the Crown lawyers to support his character, they might easily have produced satisfactory testimony of the uniform propriety of his conduct for a number of years. Mr. Miles Macdonell, Mr. Pritchard, Mr. Bourke, Mr. Pambrun, Mr. Forrest, and others who were on the spot, were all well acquainted with Heden, and might have been produced to attest his character. Their testimony would certainly have outweighed very far, that by which it was attempted to throw discredit on Heden's evidence.

say they did not want to drive away any who would live peaceably, and not take arms against them.

HUGH BENNERMAN, *sworn*.

Examined by Mr. LIVIUS SHERWOOD.

Bennerman. I know Michael Heden, and have asked him who fired first. I asked him in July last, and he said, "We fired first, and they are murdering Brown and Boucher, by keeping them in gaol."

Cross-examined by the SOLICITOR-GENERAL.

Solicitor-General. Where did he tell you this?

Bennerman. It was in this town, and he sent me for Mr. M'Kenzie, saying that he would tell the truth now.

Solicitor-General. Pray, Sir, what are you?

Bennerman. I was formerly a settler at Red River.

Solicitor-General. Was you not a servant to the Earl of Selkirk?

Bennerman. I was not; I came out as a settler, and not as a servant.

The Hon. WILLIAM M'GILLIVRAY, *sworn*.

Examined by Mr. SHERWOOD.

Mr. Sherwood. Do you, Sir, know Paul Brown, the prisoner at the bar?

Mr. M'Gillivray. Yes, I do; he is in the service of the North-West Company.

Mr. Sherwood. Has he been so, Sir, for some time, so as to enable you to know his character?

Mr. M'Gillivray. He has for some years; he has always conducted himself as an honest man, and a faithful servant. I have always heard him spoken well of*.

* A man may be a good and faithful servant to the North-West Company, and even honest, as far as respects the property of his employers, and yet be a worthless character, according to the ordinary estimation of the civilized world. In the year 1806, Paul Brown was engaged with five other

Mr. Sherwood. Do you know the other prisoner, François Firmin Boucher?

Mr. M'Gillivray. Boucher is a young man, and has not been long in the service of the Company, but has acted well; his reputation is good.

Mr. Sherwood. Is not his father a respectable man in Montreal—a freeholder?

Mr. M'Gillivray. He is a man of good reputation.

men, in robbing a house belonging to the Hudson's Bay Company of furs, to the value of several hundred pounds, which furs this Mr. M'Gillivray, who bears testimony to Brown's character, received (we must suppose in ignorance) at Fort William, where they were mixed with other furs, belonging to the North-West Company, and transmitted to Montreal, and then to London, where they were disposed of for the benefit of the North-West Company. Brown and Haldane were indicted for this robbery, at Montreal; sufficient evidence was at hand, and Brown might have been brought to trial in May 1818; but the Attorney-General of Lower Canada refused to bring on the trial, because all crimes heretofore committed by Paul Brown in the Indian territories, had been referred to Upper Canada for trial, by instrument under the Great Seal of the Lower Province (see note at page 167); an indictment for the same offence was found against Brown at York; but the Attorney-General of Upper Canada did not bring the case to trial, because the instrument under the Great Seal of Lower Canada did not specify this particular robbery, among the crimes for which Brown was to be tried. Under these circumstances Brown was discharged from custody, (see page 187 to 188) as a person against whom no farther criminal matter was alleged.

CHARGE TO THE JURY,

*By Chief-Justice POWELL.**Gentlemen of the Jury,*

This is an Indictment for the Murder of a Mr. Semple, which is said to have been committed in the Indian territories, or in a country which is out of the limits of the provinces of Upper or Lower Canada, but subject to inquiry by this Court and yourselves, under a particular statute, the 43d of the King, which gives or extends the jurisdiction, originally of the province of Lower Canada, and especially that of this province, when, by an instrument under the Great Seal of the Lower Province, it is certified that the offence can be more expediently tried in Upper Canada. The first object, and one of importance, supposing it had been attempted at all to doubt it, is to establish that we have the jurisdiction given by the statute, and then we should have to consider, whether the place at which the offence is charged to have been committed, is without the limits of Upper Canada, and of Lower Canada, as required by the Act of the 43d. Upon these points we can judge only by inference, and by certain proof given in testimony during the trial, that this Red River country, or the Frog Plains, are somewhere about $49\frac{1}{2}^{\circ}$ of north latitude, and from 90° to 100° , or thereabouts, of longitude. I premise by stating this to you, and also mention, that there is no further evidence to satisfy you of your jurisdiction. Having thus premised, I shall proceed, leaving the remainder of my remarks on this part of the subject, till I have detailed to you, as nearly as I can recollect it, and I believe that will be with tolerable correctness, the very extraordinary evidence which has been adduced on this very important trial, and which, from the peculiarity of the circumstances of the case, has branched out, and exhibited a series of evidence, such as I believe never before was produced, or allowed, in a Court of Justice, upon a direct charge of murder; but the nature of the Charge and of the Defence, perhaps

rendered it unavoidable. The evidence altogether, however, amounts to this.

Here are two Trading Companies, carrying on a commerce with the Indians to the westward of this province, the one for so long a time, and so extensively, as to have almost acquired, or amounted to, an exclusive possession, or a supposed exclusive right. In this trade they are interrupted by the other Company, who said that *they* had the exclusive right*. Thus, as might naturally be expected, difficulty arose between the two, and in the prosecution of hostilities, they were actuated evidently by a disposition to destroy each other. This, I think it is evident, has been proved to have been determined by the one and the other. Relative to the particular charge before you, the charge against Boucher and Brown, it has been proved, that on the 19th June, 1816, the day on which the homicide is charged to have taken place, the settlers of the Earl of Selkirk, and servants under the Hudson's Bay Company, were, from certain reports which had been brought to them, apprehensive of an attack from the half-breeds, who have been described to you as the bastards of white men, their mothers being Indians, and they the illegitimate offspring of French and English traders, belonging alike to the North-West and Hudson's Bay Companies†. On the 19th June, it is necessary to recollect, according to the evidence, that they expected the half-breeds *armed* to come. From what particular circumstance they were led to expect them on this day, does not appear, but it is manifest that they were expected. They did come, but not to the fort. It is in evidence, that

* The interruption to the trade of the North-West Company, which is supposed to be here alluded to, is the embargo on provisions in the year 1814, under Governor Macdonell's Proclamation, which was grounded upon a totally different principle from any claim of exclusive trade.

† This also is a gratuitous assertion, unsupported by any part of the evidence. The offspring of the Hudson's Bay Company's servants, commonly called English half-breeds, are quite distinct from the French half-breeds, belonging to the North-West Company, and hold very little intercourse with that class of people. The party in question were entirely of the latter description, and all of them in the immediate service and pay of the North-West Company.

they passed by the fort, and went on towards the river. When they were first seen, notice was given by a man from a watch-tower, a watch having been constantly kept for some time, in consequence of their apprehensions, raised by the reports that prevailed. These persons, the half-breeds, did not pass quite near the fort, nor so far from it as to pass the Settlement, which continued for a space of two or three miles. Michael Heden, the first witness on the part of the Crown, gives this account of the circumstance. He begins his evidence by stating that he was a blacksmith, and resided in the year 1816 at the Red River Settlement; that he had lived there three or four years previous to the month of June in that year, and was there on the day on which the Indictment alleges the offence to have been committed. He goes on to depose, that he knew Mr. Semple, usually known by them as Governor Semple; that the Settlement was warned by the free men and Indians, as early as March, that an attack was intended to be made during the summer, to destroy the Settlement. Fort Douglas, the residence of *Governor* [Mr.] Semple, he describes to be on the Red River, and the Settlement below it, some little distance, and extending from a quarter of a mile to three miles. In consequence of the warning which they *had* received, a lookout was constantly kept, and on the 19th June, 1816, the person on watch, at about six or seven o'clock in the evening, announced that a party of armed horsemen, with two carts, were approaching. Mr. Semple, it appears, went to ascertain what was the cause of the alarm, and ordered some of his people to follow him with their arms, for the purpose, in the words of the witnesses, of seeing "what these fellows wanted." They obeyed him to the number of about twenty, but had not gone far, when they were met by some women and children, crying that the half-breeds were coming with carts and cannon, and that they had taken prisoners some of the persons belonging to the Settlement. It does not appear that any very great attention was given to this; but after they had proceeded on about a mile, when they met more who confirmed the report of the women, with reference to the cannon, Mr.

Simple sent back a person, who was produced before you, to fetch a piece of ordnance from the fort. Mr. Semple and his party proceeded on, and the Indians and half-breeds galloped up, and dividing themselves into two parties, surrounded the others, by forming a line in the shape of a half-circle. One of them, who has been sworn to be François Firmin Boucher, one of the prisoners, came up to Mr. Semple, and asked, "what do you want?" to which *Governor [Mr.] Semple* replied, by asking, "what do *you* want?" Boucher answered, "we want our fort;" *Governor [Mr.] Semple* said, "go to your fort;" to which Boucher replied, "you damned rascal, you have destroyed our fort." Upon this *Governor [Mr.] Semple* seized his bridle, and it may, Gentlemen, be worthy of your remark, that he called at the same time to some of his people to make him prisoner. The evidence of Heden goes on to state, that Boucher then slid off his horse, on the other side to that where the witness stood; that he immediately heard a shot, which came from the Indians* party, and almost instantaneously a second from the same direction. By the first, witness deposes, that a Mr. Holte, belonging to their party, was killed; and by the second, Mr. Semple fell, and then told his men to take care of themselves. It was given in evidence, that Mr. Holte's gun went off by accident, some time before their coming up with, or being met by, the party of half-breeds; and this witness swears positively, that, with the exception of this accidental discharge of Mr. Holte's gun, the two shots he spoke of were the first that were fired; and he distinctly alleged that they were discharged by the other party. During the conversation between *Governor [Mr.] Semple* and Boucher, he had his face directed towards the semi-circle of the Indians and half-breeds, who were armed with guns, spears, tomahawks, and bows and arrows. Boucher did not fire, to the witness's knowledge, nor did

* The learned Judge describes this as the "Indian" party, though it is in evidence that among sixty or seventy men there were only three Indians.

Governor [Mr.] Semple give any orders to his people how to behave. He states also, that he saw some Indians in blankets at the battle, but they did not fire *that he saw*; that he heard, at the time of forming the half-moon or semi-circle, the war-whoop given; he afterwards heard the wounded men of the colony crying for mercy. Mr. Semple was shot in the shoulder. Witness with some others made their escape, by running towards the river, and were pursued by six *men*, who fired at them, and the surgeon fell; and while the half-breeds were killing him, the others got across the river. He saw the body of Mr. Semple, with nine others, brought in by the native Indians; the body was full of wounds of spears. The next day the half-breeds came to the fort, and Mr. Macdonell capitulated with them, that is to say, with Cuthbert Grant, whom he also swears he saw in the battle with the party by whom Mr. Semple and the other persons had been killed. That Grant acknowledged to witness that he had fired the day before, and warned him not to come again to the fort. He also swears most positively, that Paul Brown, one of the prisoners, whom he identifies, came to his tent, and said he had killed six Englishmen, and that he should be the seventh, and that he would take his life before he left the tent. Witness understood by the six men, those of the party who had been killed the day before in the battle. That the prisoner presented a pistol to his breast, but was prevented shooting him by a woman. In answer to the questions put to him upon his cross-examination, he says, that he and his party had been turned out of the Red River country once before, and their fort burned; that he himself was in the service of the Hudson's Bay Company, and that he came to that country by way of Hudson's Bay, and not through the Canadas; that there had been disputes between the Hudson's Bay people and those belonging to the North-West Company; that he does not know if the Settlement had been purchased; that on the 19th June, the day of the catastrophe, the half-breeds did not come to the fort, but kept about a quarter of a mile from it. He then swears to a circumstance

entitled to serious consideration, namely, that they received no orders to fire on the 19th June; some of their party had bayonets to their guns; he did not go to take any pemican, nor did he say that he would take it from the North-West Company, nor take their furs; nor did he hear others belonging to their party say so. Pemican he stated to be the food prepared to support the traders. The Red River receives the Ossiniboine, and they unite near Fort Douglas, and fall into the Lake Winnipic. The half-breeds, he again admits, went by Fort Douglas, where they had cannon to protect it from attack by the North-West. It was generally reported in that country, that Fort Gibraltar had been razed by the Hudson's Bay Company's people. He swears positively, that he never said the Hudson's Bay people fired first. Witness thinks, that when Boucher replied to Governor Semple, that they wanted their fort, he alluded to Fort Gibraltar, and he admits that the materials of that fort were brought down in rafts to Fort Douglas. Brown spoke to him in the Cree language, when he threatened to kill him; he repeated the words, and interpreted them; he also stated that he should have understood the prisoner, had he not comprehended the language, by the signs which he made, but that he understood the language then as well as he does now. These are all answers to questions put to him by the counsel for the prisoners; and his cross-examination ends by his saying that, though he does not, of his own knowledge, know of any pemican being taken, yet it was commonly reported that, in 1814, some had been taken from the North-West Company by the Hudson's Bay people.

The next witness is Donald M'Kay: his evidence is, that he arrived in the Red River country in 1812, and was there in 1816, and that he always heard that the Hudson's Bay people were threatened to be turned away. That coming down the river some time before in that same year, he was taken prisoner, and *carried back to Fort [sent to]* Qui Appelle; that Cuthbert Grant, who is also charged as a principal in this murder, but who is not here, was among the party who thus took the witness; and Paul

Brown, one of the prisoners before you, was also there; that, altogether, the party at Fort Qui Appelle amounted to fifty or sixty. He was detained four or five days at the fort, and during that time heard one François Deschamps say that they would go down and destroy the colony. At Brandon House he heard Boucher, the other prisoner, say, that he was glad their men had been taken; and when witness said there was a good many more at the colony, Boucher answered, that they would destroy the Settlement. Next day they proceeded to the Settlement, and learned that they expected to be attacked, and were armed to defend themselves. On the 19th June, the day on which the Indictment charges the offence to have been committed, the watch which had been kept up since they received warning, gave notice of a party coming down towards the Settlement: *The Governor* [*Mr. Semple*] looked through a spy-glass, and then called for twenty men to accompany him, and see what they were coming for. They accordingly took their arms and went out, and were shortly after partly surrounded by two parties of half-breeds and Indians, who were generally painted. He swears that he saw Grant, and many others whom he knew; that some had bows and arrows, some spears, and some guns. Mr. Semple halted them to see what the others would do, and he saw Boucher come up to *the Governor* [*Mr. Semple*], and some words passed between them, but he did not understand what they were, but he saw *the Governor* [*Mr. Semple*] take hold of the bridle of Boucher's horse, and of the butt of his gun, upon which, he says, Boucher sprung off his horse, and he (witness) heard two shots, nearly one after the other, one of which killed a Mr. Holte belonging to their party, and the other *Governor* [*Mr.*] *Semple*, who, on receiving his wound, called out to his people to do the best that they could for themselves. That he heard other shots, and saw, very shortly after, that most of his people had fallen. That he was fired at himself as he retreated. That he saw one down who had been wounded, crying for mercy, and upon seeing his body the next day, he observed that his head had been cut. The party he described as

being French, half-breeds, and Indians, and headed by Cuthbert Grant, but that he does not know whether Grant fired or not. Many of the half-breeds were painted, which he states is not common; a point in which you will recollect that he is contradicted by other testimony. He deposed also, that he remained that night at Fort Douglas, and that he saw François Firmin Boucher at the fort on the next day, with the party, of whom he knew Fraser, Grant, Brown, and others; that he heard Brown ask for Michael Heden, and say that he would kill him; that he saw *Governor* [Mr.] *Semple* fall, and that he was wounded in the thigh and in the arm; and that, on being wounded, he put his hand to his head, and told his people to take care of themselves. He stated that five of the colonists had been made prisoners by the half-breed party before the battle. He thinks the gun which killed Mr. Holte was not discharged by his own party; and you recollect, Gentlemen, that he assigned his reason for thinking so, namely, that the gun by which Mr. Holte was killed was not fired near him; and that, if it had been fired by any of his own party, he should have heard the sound nearer. He also says, that he saw no firing from his own party, except on the retreat by one man; and he at the same time was pursued by a half-breed on horseback, armed with a spear. He says that Fort Gibraltar was taken by the Hudson's Bay people, and also, that pemican was taken by them from the North-West Company. These answers, you will perceive, were given during his examination by the counsel for the prisoner. He continues, that he knows Mr. Miles Macdonell, and knows also, that a Proclamation from him was read, but that he himself reads very little, and not enough to understand the Proclamation. He knows that two or three boat-loads of pemican were taken, in consequence of that Proclamation; and in reply to a question put to him to ascertain the time, he admits that they were taken before the North-West people had taken any from them; for you cannot but have observed, Gentlemen, that both parties have committed similar outrages upon each other; but upon that subject I shall address

you presently. He continues by stating, that there was cannon at Fort Douglas, and that before that time, the North-West people had been in the habit of going down the Red River with provisions, and that the half-breeds, on the 19th June, had provisions with them in carts; that when they were first seen, they were not coming towards the fort, but going towards the Settlement.—Mr. Semple, he says, took hold of Boucher's gun, before which they were talking together, and that he did not see Boucher assault Mr. Semple. He admits that he himself fired at a man, but in vindication, says he was pursuing the witness with an intention to kill him. Bourke, he says, went to Fort Douglas for a cannon, by order of Mr. Semple. This cannon, it appears, was sent for under an impression that the half-breeds had cannon with them, but it does not appear that it had reached the battle-ground. Being asked relative to the nature of the Settlement, he states that there were about forty to fifty settlers near the fort, that they were farmers, and had raised wheat and potatoes on their farms, which had ripened and been gathered.

The next witness is John P. Bourke, who states that he also was at this Settlement in 1816; and without troubling you with the whole of his evidence, it is sufficient that he confirms, in every particular, the report that they were to be attacked, and the other circumstances, up to the time of Mr. Semple's sending for the cannon from Fort Douglas; and he was the person, he states, who went for it, and that, on returning, he saw a flash of a gun from a circle, partly formed round Mr. Semple. He goes on to say, that he afterwards heard a great many shots; he went on, and saw a number of horses, guarded by some men, and proceeding on, he saw some men on their knees in the bushes with arms; that they called to him to come to Mr. Semple, asking him if he would not come to his Governor, but that fortunately he did not go, as they fired at him. Near where he left Mr. Semple, he saw a man kneeling, in his shirt, with a handkerchief round his head, present his piece at witness, and firing it at him, the witness was wounded. He saw the two prisoners after the battle, at

the fort. Being asked as to the nature of the report of which he had spoken in a former part of his evidence, he replied, that the report was, that the North-West were assembling the half-breeds from all quarters at Qui Appelle, under Alexander Macdonell. Being cross-examined, he states himself to have been a clerk in the Hudson's Bay service since the year 1812, and in that of the Earl of Selkirk; has heard it reported that Earl Selkirk was a Partner in the Hudson's Bay Company, and does not know the contrary. He obeyed Mr. Semple as Governor, holding authority from the Hudson's Bay Company. Witness said that he knew Mr. Miles Macdonell, and having seen him write, that he believed the signature to a Proclamation shewn to him to be the hand-writing of Mr. Macdonell. You will recollect, Gentlemen, that to the reading of this Proclamation, Mr. Attorney-General objected at the time, but the counsel for the prisoners satisfied the Court that it was admissible evidence, upon the grounds which they stated they produced it for, namely, as the foundation for an uninterrupted chain of aggressions, which continued from the date of this Proclamation, down to the very hour in which this unhappy battle took place; and thereby they contended they should do away the charge of murder altogether, by shewing that these continued and uninterrupted provocations, kept the minds of the persons engaged in this deplorable contest, in that state of aggravated excitement, that, if they failed in proving that the melancholy result was produced in self-defence, and therefore justifiable, yet the circumstances would acquit the prisoners of malice prepense, and therefore reduce the killing to manslaughter*. I conceive that you will not think it neces-

* The position admitted by the Court on this trial, as we collect it both from this passage and from the various observations of the Judges in the course of the trial taken together, is this. Two parties of armed men meet: a person from one of the parties rides up to the leader of the other, and by insulting language provokes a trivial assault. Upon this the party (to which the person who has received the assault belongs) fire upon and massacre all the other party. In this case, for the purpose of reducing the offence to manslaughter, evidence is admitted, respecting aggressions com-

sary that the Proclamation should be read to you again. You will remember that it assumed an authority over that part of the country, and under it, or by virtue thereof, forbade the purchase of meat killed there, or of other produce of the country, procured, or raised, within the territory, for the purpose of being taken out. *Whether this Proclamation was legally issued or not, is not a question for you.* The effect of the Proclamation was to produce, according to the witnesses, discontent among the half-breeds and Indians. This witness (Bourke) continues his evidence,

mitted, not by the persons who were slaughtered, but by others who had formerly occupied the same situation, without any proof that the persons who committed the homicide had individually received any provocation on these former occasions, but merely that the property of their employers had been invaded, under circumstances which would have afforded them ample opportunities of obtaining legal redress for the alleged injury. The admissibility of the evidence was stated by the Court to rest upon the principle, that although each act of aggression in itself might be indefinitely slight, these injuries collectively might keep up a constant irritation in the mind, so as never to allow the passions to cool, and thus reduce the killing to manslaughter.

It cannot be necessary to comment on this enormous position, or to point out the extravagant manner in which it distorts the whole principles of the law of homicide. That irritation, which the law of England admits as a palliation of homicide, is universally spoken of by the most distinguished law writers under the appellation of "*brevis furor*," a momentary phrenzy inconsistent with the intervention of a night's sleep or any return of reason or composure. Trespasses against property, however recent, are not sufficient causes in the eye of the law to excite it, and the indulgence with which it is regarded in cases of personal injuries is founded on the maxim that no subsequent compensation can requite an injury to the person, (Lord Bacon's Maxims). The law therefore regards with compassion those sudden transports of indignation with which personal injuries inflame the mind, but it does not justify a man acting under the influence of such an irritation in transferring his vengeance from the person who has offended him or his friends, to other individuals connected, however intimately, with that person. But admitting that the justification pleaded by the prisoners were legally admissible, it surely ought not to have been touched upon in the Chief-Justice's Charge to the Jury, unless to point out to them, that it was completely unsupported by the facts in evidence, that instead of a connected series of aggressions continued without interruption "down to the very hour, in which this unhappy battle took place," some insulated instances had been adduced in evidence, most of which had occurred at the distance of years, and the last nearly a month before the homicide under trial.

(you will recollect that he is now being cross-questioned,) by saying that he had heard of the taking of pemican by the Hudson's Bay Company's servants; that Michael Heden, the former witness, was, as he believes, at the taking of Fort Gibraltar, and that he (witness) saw the materials of that fort, as he believed, brought down in rafts to Fort Douglas, in the latter end of May of the year 1816. He says also, that *Governor* [Mr.] Semple and his people went out to protect the settlers; and he adds, that if they had been in the fort, he does not think that they would have gone out. Their apprehension of being attacked arose from reported threats of an attack upon the settlers being intended, and also from their having been driven away the last year; and after the 19th June, the half-breeds did drive away the settlers who were then in their power. In answer to a question from the Crown officers, he said that the half-breeds could have escaped from any pursuit by the Hudson's Bay people, they being on horseback, and that without abandoning their carts, as the road was a plain.

Hugh McLean, another witness on the part of the prosecution, also resided in 1816 at Fort Douglas; he confirms the preceding witnesses, relative to the reports of an intended attack upon the colony, and that upon the 19th June, he saw the half-breeds making towards the houses of my Lord Selkirk; upon which Mr. Semple went out with about twenty men; the Brulés, he represents, as being seen from a spot near the fort, at about a mile, or a mile and a half distance, coming towards the woods, which were above the Settlement, and between it and the fort; that he went into the fort, and remained there till Bourke came for the cannon; he went with him and drove the cart for about a mile; when, at a distance of about half a mile farther, he saw a number of men on horseback, riding among *Governor* [Mr.] Semple's people, upon which, by Bourke's direction, he returned with the cannon to the fort. He states that he found Bourke afterwards at the place where he had left him when he returned with the cannon, and that he was wounded; at this moment four or

five men came up, who advised him to return back, which he did, several persons firing at them; being asked if he knew any of them, he answered that he did not. He mentioned that the Frog Plains were two or three miles below the fort. A large party, he stated, came to the fort the day following, and amongst them Cuthbert Grant, whom he then knew for the first time, *I think he said*. He also gave evidence of seeing a number of dead bodies, on the day following, and among them that of Mr. Semple; that one of his arms were broken, and one of his thighs, and it appeared that a ball had passed through his throat and head. He closed his examination in chief by saying, that he saw the prisoner Boucher also at the fort, on the next day, with Cuthbert Grant. In answer to the cross-questions, he said that it was Mr. Macdonell who bid him go with the cannon; but he added, that he had no ammunition, nor any orders to fire; that the colonists were plundered of some of their goods by the half-breeds after the battle, but were none of them murdered, though completely in their power.

Patrick Corcoran, another witness, introduces his testimony in the same way, stating that he was at Fort Douglas in 1816. In the spring of that year he went with a party to Qui Appelle, and on his return he was made a prisoner, and carried back to the North-West fort, where it was the general talk that the Settlement was to be attacked. There were not many Indians there; but a good number of half-breeds, some of whom told him of the intended attack. Pangman, or Bostonois, was at Qui Appelle, also Cuthbert Grant. Witness related these conversations when he returned to Fort Douglas, and that he had heard Cuthbert Grant say that they were going down to visit Mr. Robertson, who should see what they could do. On the 19th June he was at Fort Douglas, not in the battle, but in the fort; he saw the party go out with Mr. Semple, and the settlers and women come crying. On the next day he saw some half-breeds come to the fort, and he saw both the prisoners there; he also saw the corpse of Governor Semple; and Cuthbert Grant, he also states, he saw at the fort.

Being cross-examined, he says that it was in the month of May 1816, that he was at Qui Appelle, which he describes as about four hundred miles from Fort Douglas. He has been seven years in the Hudson's Bay Company's service; he saw Fort Gibraltar after it was taken, and the materials brought down to Fort Douglas. When they said they were going to visit Robertson, they alluded to the circumstance of Robertson having taken Fort Gibraltar from the North-West Company. Robertson was in the service of the Hudson's Bay Company, and as witness thinks, was under the orders of Mr. Semple, by whose orders witness himself went to Qui Appelle. He says that he does not know, nor did he ever hear, that cannon were planted on the banks of the river, to prevent the North-West people from going down. He also said, that he had heard that the North-West people went down to within about a day's journey from the fort in canoes, when they disembarked, and pursued their route by land. He swore that he himself had told them at Qui Appelle, that Mr. Robertson would not stop any persons passing quietly down or up that river.

The next witness is Mr. P. C. Pambrun; but, Gentlemen, I consider it unnecessary that the testimony should be read further to you, as you will doubtless remember its general tenor, and its very contradictory nature. Indeed the state of my eyes* does not permit me to read by candle-light, but I am satisfied you will remember its general tendency, and the particular points shall be adverted to by me in the course of my observations. The testimony on the one side and on the other, is almost all from the servants of the contending parties, and differs in almost

* It was singularly unfortunate, that the learned Judge's eye-sight should have failed him at the moment when he was coming to the most important and decisive part of the evidence for the prosecution. It is also very unfortunate that he should have been prevented from noticing in detail the evidence brought forward on the Defence, and pointing out to the Jury what parts of it were relevant.

every material fact. The very first which presents itself is, who fired first? One swears peremptorily that it came from the half-breeds, and gives you his reasons for so swearing; also proving, as far as his testimony can prove it, that, by this shot, and another from the same party which instantaneously followed, a Mr. Holte and Mr. Semple were killed. On the other hand, it has been sworn to with equal positiveness, that when they saw each other in the field, Boucher, one of the prisoners, from his speaking some English, was sent from the party of half-breeds to inquire what the Hudson's Bay people, or settlers, wanted; and they say positively, that the *English*, or Governor Semple's party, fired first*.

* The evidence as to the fact which party fired first, seems to be very imperfectly stated by the learned Judge. His account given to the Jury is, that "one" says the half-breeds fired first, and "they" say Governor Semple's party fired first. The only evidence on this point produced by the counsel for the prisoners is that of Martin, who said "the smoke and" report of the first and second gun came from the English he was sure." There are four witnesses who speak to the fact on the part of the prosecution. Heden says, that the first shots came from about the centre of the half-moon formed by the party who were attacking Governor Semple; he saw the smoke and could not be mistaken, and that he heard Governor Semple repeatedly tell his people not to fire. M'Kay says Boucher got off his horse, and as soon as he was off, he heard a shot and saw Mr. Holte die, and immediately after heard another shot, and Governor Semple was killed immediately after Mr. Holte; for two shots went off directly after one another, by one of which (the first) Mr. Holte fell, and by the other Mr. Semple, who immediately called out to his people to do what they could to take care of themselves. He did not hear, nor did he believe that any of his party fired before Mr. Holte and Governor Semple fell. Bourke said, that he saw the flash of a gun, and immediately after another, and presently after I saw a general firing along the whole line of horsemen. Pritchard said, that he turned round instantly after the first shot and saw Lieutenant Holte struggling. The number of witnesses, and the circumstantial nature of their testimony, greatly preponderates over the single assertion of Martin, who was not slightly interested in giving this colour to the transaction, for he was himself one of the party whom he endeavours to exonerate from the charge of murder. Add to this the probability of the case; the smallness of Governor Semple's party, their want of preparation for attack, the means of retreat cut off, and the impossibility of supposing, that, under these circumstances, they would commence firing on persons from whose

It may be proper, at the present moment, to notice an argument that has been insisted upon, relative to the crime charged against the persons named in the Indictment. It has been contended, by the counsel for the Defence, that this melancholy affair, ending in the death of twenty-two persons, ought not to be considered as murder, but as a great trespass, the country being, from peculiar circumstances, in a condition which put its inhabitants out of the ordinary protection of the law; the individuals forming these two great Companies, together with their servants, being in a state of hostility to each other, and by their mutual acts of violence, forming a state of affairs similar to that of the ancient nobles and their adherents, during the contests of the Barons under the feudal system. But, Gentlemen, happily we do not live under the feudal system; those days of discord and confusion have passed, and with them, those constructions of law applicable only to such a state of affairs. Another circumstance worthy of your observation, is the mode by which you acquire the jurisdiction, and its nature. Although this province had no jurisdiction till given by the statute of 48d of the King, upon which the Indictment is founded, over offences committed in what is called the Indian territory, yet that Act completely establishes the power, under the provisions contained therein, and which have been strictly attended to in the case before you; the Instruments under the Great Seal of the Lower Province having been given in evidence; and in addition to giving the jurisdiction, it provides for the exercise of it, in the same manner in every particular, as if the offence had been actually committed within the district where the trial is held. *The whole of the argument therefore relative to the nature of the offence is set aside.* What is crime here, is crime in

mercy alone they could expect the preservation of their lives. It is singular that the learned Judge should have entirely omitted to notice the circumstance of the half-breeds having surrounded Governor Semple's party, so as to cut off their retreat; a fact which the prisoners do not attempt to deny, and which affords such decisive evidence of hostile intention.

those Western territories; what constitutes murder here, constitutes murder there; and the offence is to be ascertained in the same way, and if convicted of any offence, then the offender is to receive the same punishment, as if committed here, in the Home District. Then, Gentlemen, you are called upon to consider this a crime charged against the prisoners, (though committed neither in the Provinces of Upper or Lower Canada, and without the limits of any civilized government of the United States of America,) in precisely the same manner as though it had been committed actually within the Home District. The first point to satisfy yourselves upon will be, that the persons charged are in fact killed. Upon that part of the subject you can, I imagine, entertain no doubt. Various witnesses detail to you that they saw the corpses, and assisted in burying them. There can then be no reasonable doubt of the homicide having been committed, indeed none at all. The next consideration will be, by whom was it perpetrated, and with regard to the prisoners, how they are severally affected by the evidence produced on both sides. Relative to Paul Brown, there appears, I think, no evidence against him, but that which arises from his own folly on the next day, as detailed in the testimony given by Michael Heden, the first witness examined on the part of the prosecution: he swears, you will remember, that on that day Brown came into his tent, and presented a pistol at him, saying in the Cree language, "that he had killed six Englishmen, and that he "should be the seventh;" and witness says, that he did suppose that he meant in the affray the day before. Excepting this witness, there is none, I think, that gives any testimony affecting Brown; whilst, on the other hand, it is sworn positively, by witnesses who were in company with him at the time of the firing, that he was not in the battle. I think, from the unsuspecting evidence of the Canadian who was examined (Ducharme), it is manifest that he went below the scene of action, for that witness states, that he himself was encamped a short distance below the Frog Plains, and that, on hearing the first firing, he went up, and saw Brown, who had just arrived with the cart of provisions

of which he had charge; a circumstance which would be likely to keep him away from the battle. Indeed there are two who swear positively, that he was not on the battleground; and there is only one circumstance, (which certainly, if you credit the witness, arose entirely from himself), that makes against Brown, namely, what passed in Heden's tent. No one swearing that they saw him on the ground at the time of the battle, and two shewing a positive *alibi*, I think you will have no difficulty in saying, (as I think it perfectly clear), that the prisoner, Paul Brown, was not on the ground at the time of the battle, and consequently could not have perpetrated the crime*. With re-

* The Chief-Justice here draws an inference, which does not appear to be consistent with the principles laid down by the highest legal authorities. In Foster's Crown Law, 349, we find the following position:—"When the law requieth the presence of an accomplice, at the perpetration of the fact, in order to render him a principal, it doth not require a strict, actual, immediate presence, such a presence as would make him an eye or an ear-witness of what passeth." Foster, in that part of his celebrated work, puts several imaginary cases of constructive presence, under circumstances very similar to those in which Paul Brown appears to have been placed. In the cases of Lord Dacres, mentioned by Hale; and of Pudsey, reported by Crompton, and cited by Hale, (Foster, 354,) the offences they respectively stood charged with as principals, were committed far out of their sight and hearing, and yet both were holden to be virtually present.

With respect to Boucher, the Chief-Justice of Upper Canada says, that there is no evidence of his taking any part in the battle, and certainly none that he killed any body. Yet if he came there with an ill intention, the law considers him guilty. This principle is expressed in a much more pointed manner by Justice Foster:—"Though there be no special malice against the party slain, nor deliberate intention to hurt him, yet if the fact be committed in the prosecution of an *original unlawful purpose*, (though it be a mere trespass,) the whole party will be involved in the guilt of him who gave the blow."

The question then, which ought to have been referred to the consideration of the Jury, was not whether Brown was present at what is called the battle, or what share Boucher took in the proceedings, but whether they were among the parties engaged in an original unlawful purpose, in the prosecution of which the homicide in question was committed.

With respect to the original purpose of the party under Cuthbert Grant, no one who reads Grant's own letter of March 13th, (which see at p. 89,) can doubt that it was, at the least, to compel the settlers to abandon the country, and to lay waste the Settlement, as had been done the preceding year. That this purpose was entertained not merely by Grant, but by the

ference to Boucher, it is certainly equally clear, that he was there, and you are to examine what share he took in the proceedings. The commencement clearly was not with him; they, that is his party, whatever might have been their original motive, or real intention, in coming to this part of the country, had certainly, at the moment when this unfortunate *Governor* [Mr.] Semple marched out, (under perhaps an idea that he had authority for any measure he might adopt, or perhaps with a view to ascertain the object of an armed force, and to afford protection to the Settlement, which had become apprehensive from the reports of an intended attack,) the Bois-brulés' party had certainly given no offence, nor offered any insult. Their having been perceived passing the fort a distance, led Mr. Semple

whole party of the half-breeds, is evinced by the tenor of the speeches openly made, and threats continually uttered by them, both at Qui Appelle, and on their route from thence to the Settlement, as appears from the evidence of Pambrun, Corcoran, and M'Kay. As to the participation and concurrence of the prisoners in this purpose, the evidence would undoubtedly have been much more complete, if the Attorney-General had insisted on the production of Boucher's declaration before Mr. Mondelet (see note, page 99), and also had brought forward the evidence of M'Intosh and Livingston (see note, page 53). But notwithstanding those omissions, there is sufficient evidence against Boucher, in M'Kay's testimony, as to the threats which he used at Brandon House (see page 51); and this derives no small corroboration from the declaration which Boucher himself made to Pritchard at Fort William, (see page 91,) viz. that he had summoned Governor Semple to surrender and lay down his arms, and told him that otherwise he and his party were all dead men. With respect to Brown, there is evidence that he was among the half-breeds, at the time when they were engaged in overt acts of their unlawful purpose, and when their intentions to destroy the Settlement were openly and publicly avowed. His conduct to Heden after the massacre, and his boast of the number that he had killed, is considered by the Chief-Justice as a piece of folly, deserving of no attention; though perhaps it would have been more proper if it had been left to the Jury, to decide between the credit to be allowed to the prisoner's own declaration, and the evidence by which he attempted to establish an *alibi*: but supposing this evidence as to the *alibi* to be admitted, Brown's conduct to Heden, and his boast, however empty, must at least be admitted as evidence of the *animus*, with which he took part in the proceedings of the party under Cuthbert Grant; and, according to the principle laid down by Foster, will be of a material consequence, in fixing upon him, "the guilt of those who gave the blow," by establishing his participation in the original unlawful purpose.

to direct some twenty men to follow him, to see what these fellows wanted. Boucher, from the evidence of several of the witnesses, advanced towards Mr. Semple, and the testimony as to what passed is this: Boucher inquired of Mr. Semple, "what do you want?" who rejoined, "what do *you* want?" The answer was, "our fort." To this *Governor* [Mr.] Semple replied, "go to your fort." Boucher then said, "you damned rascal, you have destroyed "our fort." Up to this time there does not appear to have been any act of violence; the language was certainly violent, and calculated to provoke*. Those who were near to Mr. Semple at this time, represent that, at this moment, he took hold of the bridle of Boucher's horse, and of the butt of his gun; upon which Boucher slid off his horse on the opposite side, and made his escape. This forms the whole of the evidence against Boucher, as far as relates to the 19th June. On the 20th, he is proved to have been among those who went to the fort, so that the evidence, as to his being one of the party, is complete. Before convicting the prisoner for being guilty of murder, you must be satisfied of the malice prepense of his mind; and it is necessary that I inform you that, where it does not clearly appear so as to be capable of open and direct proof, the law always supposes it to exist; it takes the circumstance of presence as a proof, and puts it upon the person charged to clear himself from the allegation, by proving circumstances which alleviate the offence to manslaughter, or render it justifiable homicide. Thus, though there is no evidence that Boucher took any part in the battle, and certainly none that he killed any body, yet if he came up there with an ill intention, then the law considers him guilty. It is, therefore, not to be wondered at, that the extraordinary line of defence which has been taken by the counsel for the prisoners, should have been adopted. When the evidence was first gone into, an extraordinary latitude was given, from the very peculiar nature of the

* The learned Judge might have added, that it was also inconsistent with the design, alleged in the Defence, of passing without molesting the fort.

whole case. Ordinarily, when a person is charged with murder, to diminish or alleviate the offence to manslaughter, the accused must shew such an immediate impression of mind, arising from aggravation, that, in its exasperated state, it was incapable of control, and that there was no interval sufficient to allow the mind to cool from the effect of the provocation. In the case before you, a long chain of circumstances have been gone into, to prove the exasperated state of mind in which the servants of these two great Companies were, owing to mutual and continual attacks upon each other's persons and property; a state of mind which, it is contended by the prisoners' counsel, was continually kept up by uninterrupted aggressions; and it is thus they account for what, in a civilized country, would in itself be sufficient proof of a criminal intention. They stated, and endeavoured to satisfy you by evidence, that the reason for their riding in what might be considered as in armed array, was merely to protect their persons and property from attacks which they apprehended would be made upon them; and they state that this apprehension arose from the circumstance of their having been previously attacked, and their provisions and property taken from them.

The North-West Company, it has been stated, are the masters of an immense number of servants of different descriptions, and carrying on trade over an immense territory, where provisions are not, in many places, able to be obtained; and that the Red River country is the place where the buffalo abounds, and from whence, up to this period, they were in the habit of obtaining those supplies from the hunters, which their trade rendered necessary, but which, from the conduct of the Hudson's Bay party, they say, they could not expect for the future; because it is put in evidence, if you believe the testimony, that it had been seized, and taken from them, by the servants of the Hudson's Bay Company. The first evidence upon this part of the subject, is a Proclamation of Mr. Miles Macdonell, as Governor of Ossiniboia, and which they state was acted upon by their pemican being seized. It was insinuated that, if the object was merely to send provisions, they would have been sent

in the usual method by water. To rebut this, evidence has been put in to shew that, unless they went by land, from the nature of the country, there was no passage except in view of the fort; and this they make appear: indeed it is not attempted to be contradicted. Another circumstance may as well be noticed here, as it accounts perhaps for their being so near the fort at the time they were descried; they state, and give evidence, that a swamp prevented their passing it at any greater distance. The prisoners' counsel contend upon the whole case which they have made out, that they were apprehensive of being attacked, and of having those provisions (which they allege it was indispensable should meet the canoes which were expected from Montreal and Fort William) taken from them, and that, therefore, it was only an act of common prudence, or absolute necessity, to send a guard with them; and they allege, that that was the only reason for their appearing armed. They go farther, and contend that they have shewn that, though armed, they acted in strict compliance with the orders which had been given by Mr. Macdonell at Qui Appelle, which were, to avoid the Hudson's Bay people, if possible, and to go as far from the fort as practicable. On the other hand, Gentlemen, and it is for your consideration to which the truth belongs, it is contended that all this is mere pretence, and that the taking of provisions was merely a pretext to cover what had long been entered into and decided upon, *viz.* a deliberate plan to destroy this settlement of the Earl of Selkirk. In support of this position, they have gone into evidence of a large number of half-breeds and others assembling at Qui Appelle, for hostile purposes, and, according to some of the witnesses, they were prepared for aggression by harangues being made to them of an inflammatory nature, and by presents being given, and other means calculated to excite them to the commission of aggression*. On this, Gentle-

* Surely the Chief-Justice has presented to the Jury a very imperfect statement of the evidence adduced in support of this position. Here is no mention of the letter from Cuthbert Grant, the leader of the armed party,

men, you are to decide. It is not the Court, but you, who are to estimate, whether it was really and truly to protect their provisions, and guard themselves from attack, or whether it was, as contended by the prosecution, only an artifice resorted to, to mask the destruction they meditated against this infant settlement?—Whether this melancholy termination resulted from their accidentally meeting, whilst both parties were in a state of exasperation, from the mutual aggressions which had been offered, I do not know: it is for you to determine, from the evidence, who commenced the affray, and what are the circumstances which justify or palliate the conduct of the prisoners. I do not know, nor is it requisite, but it is my duty to tell you, that if it shall appear to you, from the whole tenor of evidence which has been adduced, that, instead of pro-

from whom Governor Semple received his death, written a short time previous to this transaction, and fully expressing the nature of his designs against the colony. Here is no allusion to the language of the prisoner Boucher when at Brandon House, on his way down to Red River, conveying a direct threat "that the party would destroy the Settlement" (see the evidence of Donald McKay, p. 51). Here is no observation on the half-breeds coming to the place painted and disguised, like Indians on a warlike expedition; no mention of the war-whoop, with which they advanced to surround Governor Semple. Surely the Chief-Justice ought not to have omitted to point out to the Jury that before the attack, the carts with provisions had already reached the Frog Plains, and were two miles in advance of any possible pursuit, and that the whole of Cutlibert Grant's party being on horseback, they could with facility have avoided the colonists, even supposing a hostile intention had been manifested on the part of the latter: it ought to have been pointed out also, that the malice of Grant's party had been plainly indicated by their firing on some persons who had never been engaged in the conflict, and had offered no provocation, and also by their shedding blood after all shew of resistance had ceased. The Chief-Justice might have observed also that it was perfectly consistent with the most insidious designs, that the assailants should try to pass unobserved by the fort, in order that the settlers who were engaged on their lands might fall an easier prey to them; and that, in fact, several of the settlers were taken prisoners when pursuing their customary occupations, prior to the engagement. He might have remarked that there was no ground for any anxiety to convey provisions in order to meet the canoes coming from Montreal, as it was in evidence that there was then a superfluity of provisions at Bas de la Rivière; and that by the evidence of several of the witnesses, the conveyance of provisions was not, at the time of the transaction, assigned as the object of Grant's expedition.

tecting their provisions, and being in a situation to defend themselves if attacked; I say, if the tenor of the whole evidence shall appear to you to demonstrate, that this was a mere pretext, and that, under cover of a justifiable precaution, they did give orders, if the least insult was received from the Hudson's Bay people, they were then to destroy all they could meet; I repeat, Gentlemen, if you believe that this sending of provisions under a strong guard was only a pretext, although orders were not given to the half-breeds actually to destroy the Settlement, or to commence an attack, unless some insult should be offered, then, Gentlemen, I have no hesitation in saying, it is as much murder as if the slight insult given to Boucher had not been offered. But I do not know that it was the case; it is you who are to judge, it is you who are to say where the weight of testimony preponderates; but I do not think you will find the evidence go that length. The evidence as to the party with whom the firing commenced, is contradictory. The testimony on the one hand is, that it began on the side of the half-breeds. The Hudson's Bay people assign as a reason for going out of Fort Douglas armed, that they had heard reports that they were to be attacked by the half-breeds, and they swear, some positively, and others to the best of their belief, that the two first shots, and by which Mr. Semple and a Mr. Holte fell, came from the half-breeds. If you believe this testimony, Gentlemen, there will be an end to the justification set up by the prisoners' counsel. If, on the other hand, you believe that the North-West party went armed merely for the purpose of guarding their provisions, which it was indispensable they should send to that part of the Indian territory, and that upon seeing them approach the Settlement at Red River, this unfortunate Mr. Semple went out with a number of men armed, no matter with what intention, whether, as given in evidence, simply to ascertain what the half-breeds wanted, or by a shew of force to frighten them, and thus deter them from the commission of any violence, and on their part intending to commit none, yet that from their party the first shot was fired, in point of

fact, the case will certainly be very different. It is, Gentlemen, for you to construe this differing testimony as you please, and no doubt you will exercise a sound discretion. If these people were inoffensively, and of necessity, going on a lawful business, and had no other intention, I am not prepared to say that Boucher even is guilty. I say nothing of Brown, as there is no proof against him. If, however, you are of opinion that they originally intended to destroy this Settlement, and kill those who opposed them, then it is murder, because all the appearance of lawful and necessary avocation, is only a criminal precaution, shewing a deliberate and deep-laid plan to effect the object in view. But if you think that this melancholy scene was produced, perhaps by feelings of indignation for former oppression, creating apprehensions of present danger, or from any other cause, and the Hudson's Bay people fired first, then I cannot say that the others were not justifiable in using their arms to protect themselves. It is, however, your province, Gentlemen, to decide this point as well as all others. It is the duty of the Court to give you opinions only as to the law applicable to these points. *It is therefore my duty to tell you, as to war it is all a farce.* Upon the whole, as to Brown, I think you will have to acquit him, as there is no evidence against him, except what arises from his own folly, in saying he had killed six men. An *alibi* being positively sworn to, and not contradicted by any testimony on the part of the prosecution, I do not perceive that the declaration given in evidence can prevent his acquittal. If, after due deliberation, you find the charge of murder to be established, then Boucher is, as he is charged in the Indictment, a principal; but he is not so unless you are satisfied of a felonious intention having been proved to exist in his mind, or in the mind of those that sent him. It only remains that we consider our jurisdiction, connected with locality, to give us a right to try them under the Act upon which they are indicted. The offence must have been committed out of the limits of this province; whether we have a right or not, I declare I am at a loss to decide. Mr. Attorney-General has put in evidence the

latitude and longitude of the Frog Plains, but he does not put in evidence, whether this latitude and longitude is without or within the boundaries of Upper Canada, and I not know whether from 90° to 100° or 150° form the western limit of Upper Canada; nor do I know whether a place at that longitude, and having 49° or $49\frac{1}{2}^{\circ}$ north latitude, is within the province of Upper Canada, or beyond its boundaries.

The Attorney-General here said that he had shewn, by the evidence of Mr. Coltman, the latitude and longitude, and the precise situation of the place where Mr. Semple was killed; it was for the Court, who alone could judge of the construction of Acts of Parliament, Treaties, and Proclamations, to decide whether they had cognizance of an offence committed at a place so situated.

Mr. Sherwood contended that the question of jurisdiction was one not of law, but of fact; it could not be pleaded in abatement, and the reason was, only matters of law could be pleaded in abatement.

Chief-Justice. Brown, from there being no evidence against him, must be acquitted. If, on the testimony that has been produced, the Jury shall be of opinion that the homicide was murder, and that Boucher was a principal, present, aiding, helping, abetting, comforting, assisting, and maintaining, the person who committed the murder, from malice aforethought, in himself, or in those that sent him, and that this lamentable effusion of blood did not arise from a sudden impression on rude and half-savage minds, from seeing their comrades assailed, or from any apprehension of death to themselves, but that it was the result of a felonious intention, then you will find him guilty on a special verdict to this effect: "We find François Firmin Boucher guilty of the murder of Robert Semple. We cannot see, from any evidence before us, what are the limits of Upper Canada;" then, when the case is made up for argument, it will be set forth that the spot was in about $49\frac{1}{2}^{\circ}$ north latitude, and between 90° and 100° west longitude; and a solemn decision being had upon it, justice will eventually be administered

according to the decision; but the Jury might return a general, or a special verdict, as they thought proper.

Officers were sworn to the safe keeping of the Jury during their deliberations, in the usual form. The Court was then adjourned for one hour; but before the Judges had left the Court-house, it was intimated that the Jury had agreed upon their verdict, and being called over, they severally answered to their names.

Clerk of Assize. How say you, is Paul Brown, one of the prisoners at the bar, guilty of the felony and murder whereof he stands indicted, or not guilty? . . .

Foreman. NOT GUILTY.

Clerk of Assize. How say you, is François Firmin Boucher, the other prisoner at the bar, guilty of the felony and murder whereof he stands indicted, or not guilty?

Foreman. NOT GUILTY.

The Verdict was formally recorded, and assented to by the Jury, who were then discharged.

Chief-Justice. The Court having knowledge that there are other Indictments against the prisoners, they cannot be discharged.

The Court was then adjourned until to-morrow morning, nine o'clock.

Wednesday, 28th October, 1818.

On this day the Attorney-General communicated to the Court, the course which he proposed to adopt in conducting the remaining prosecutions against the persons whose offences had been transmitted from Lower Canada, for crimes alleged to have been committed in the Indian territories. He said he understood the opinion of the Court to be, that they had no cognizance over offences not specifically mentioned in the sealed instruments: he had, however, submitted to the Grand Jury, several Indictments liable to this objection, and they had been returned true bills. Those that are clearly within this objection, of course it would be improper for him to offer to the attention of the Court: but there were some concerning which

he had a difficulty. Grant, Perrault, Brown, and Boucher, were indicted for the murder of M'Lean. These persons were charged in the instruments with the murder of Mr. Semple and twenty-one persons; now he considered the murder of M'Lean and Semple as the same transaction, and therefore that the murder of M'Lean was an offence referred by the sealed instrument. He had therefore charged Cuthbert Grant as principal, and Brown and Boucher as aiding and abetting Cuthbert Grant in the murder of M'Lean. He had also charged a person unknown as principal, and Brown and Boucher as aiding and abetting in the murder of M'Lean. These indictments for the murder of M'Lean, were returned true bills, but the evidence which he could produce in a trial against the prisoners for the murder of M'Lean being precisely the same as that brought forward on the last trial, he thought it an act of justice to move for a *Noli prosequi* in favour of the prisoners for the murder of M'Lean. He had also prepared another indictment against the prisoners for aiding and abetting M'Kay in the murder of Rogers. It might indeed be objected, that the murder of Rogers was not an offence named in the sealed instrument; and also that if M'Kay were here himself, the Court could have no power to try him*. This indictment he had *not yet* presented to the Grand Jury.

* An indictment for the murder of Rogers would have been the most advisable to be preferred against the prisoners, as that act could have been shewn incontestibly to have proceeded from deliberate malice, since it was perpetrated, when all shew of resistance had ceased, and when the person killed was begging for mercy. No part of the Defence upon which Brown and Boucher were acquitted of the murder of Semple, could by any sophistry have been admitted on a trial for the murder of Rogers. Before this indictment for the murder of Semple was brought to trial, the Attorney-General had been strongly urged by persons, who attended on the part of the prosecution, to bring the prisoners to trial upon an indictment for the murder of Rogers. It was particularly pointed out to him, that it could be distinctly proved, that Rogers was killed when he was without arms, begging for his life, so that no defence could be set up on the ground of aggression, and that all question as to which party fired first would thereby be avoided. The Attorney-General admitted the

Boucher was discharged, and Brown was ordered to be kept in custody, to answer the other indictments against him.

force of this argument ; and his answer led the agent for the prosecutor to expect that he would adopt the course which was recommended : but he determined otherwise without any farther communication, or any explanation of his reasons.

As to the difficulties which the Attorney-General here states, as obstacles against bringing Brown and Boucher to trial as present, aiding, and abetting in the murder of Rogers, it is to be observed, that the whole of the evidence was put into the Attorney General's hands in the month of July, more than three months before any of the trials came on. Thus he had ample time to consider in what shape the indictment might be framed, so as to avoid technical difficulties ; and to bring out the evidence in the most conclusive manner. Since he found that the instruments, which had been transmitted from Lower Canada, were not sufficient for the purposes of substantial justice, and could not admit of the cases being brought fairly to trial, was it not his duty to state the deficiency ; and to apply to the Government of Lower Canada for such further instruments as were necessary to carry fairly into effect the intentions of that Government, in referring the trials to the Upper Province ? In the month of July, the Attorney-General himself, stated to Lord Selkirk, and expressed his own concurrence in the opinion of the Judges of the Court of King's Bench in Upper Canada, that no case could be brought to trial before them under the Act 43rd Geo. III. c. 138, unless the instruments under the great Seal of Lower Canada, distinctly specified the particular offence to be tried. The Attorney-General had therefore abundance of time to have obtained a remedy for the defect in those instruments, which only referred, in general terms, the trial of certain specified individuals, for all offences " heretofore committed in " the Indian territories."

TRIAL

OF

JOHN SIVERIGHT, ALEXANDER MAC-
KENZIE, HUGH M'GILLIS, JOHN M'DO-
NALD, JOHN M'LAUGHLIN, AND SIMON
FRASER, AS ACCESSARIES TO THE
MURDER OF ROBERT SEMPLE, Esq.

*At a Court of Oyer and Terminer, held at
York, in the Home District of Upper Canada,
on Friday, the 30th October, 1818;*

PRESENT

HIS LORDSHIP CHIEF-JUSTICE POWELL,
THE HON. MR. JUSTICE CAMPBELL,
THE HON. MR. JUSTICE BOLTON.

THE TRIAL OF

JOHN SIVERIGHT, Accessary before and after the Fact;
ALEXANDER MAKENZIE,
HUGH M'GILLIS,
JOHN M'DONALD,
JOHN M'LAUGHLIN, and
SIMON FRASER, } Accessaries after the Fact;

*Who were severally arraigned on the Indictment for the
Murder of Robert Semple, Esq. and pleaded Not Guilty;
when, after various challenges on the part of the prisoners,
the following Gentlemen were sworn as a Jury :*

| | |
|--------------------|-------------------------|
| *George Bond, | *John M'Dougall, junior |
| *John Wilson, (3d) | *Peter Whitney, |
| William Harrison | *Alexander Montgomery |
| Peter Lawrence | Jonathan Hale |
| *Michael Whitmore | *Harbour Simpson |
| *Joshua Leech | John Hough. |

The Solicitor-General stated the tenor of the Indictment:

The Attorney-General said, that the Jury were impanelled to try Siveright for being an accessary before the fact, and the rest of the prisoners for being accessaries

* The Jurors, eight in number, to whose names asterisks are prefixed, were on the Jury by whom Boucher and Brown, charged as Principals in the same indictment, had been acquitted, (see page 32.)

after the fact. Almost any act which had a tendency to promote the perpetration of the crime, would make a person an accessory before the fact. In ascertaining the guilt of persons accused as accessories after the fact, it was necessary for the Jury to satisfy themselves that assistance was actually afforded, with a knowledge of the guilt of the principals. In this case two of the persons charged as being principals had been acquitted, and the others had not been yet brought to trial; it was therefore a voluntary act on the part of the prisoners to submit to trial before the conviction of any one of the principals. If the Jury found either of the four persons charged as principals had committed the crime of which they were accused, and that the prisoners were accessories to the catastrophe of the 19th June, they were just as guilty as though the other persons had been convicted. The Attorney-General related the origin of the Earl of Selkirk's colony, and the aggressions which had been inflicted on the inhabitants of it prior to the 19th June, 1816, and he then gave an outline of the evidence he intended to produce. He should distinctly prove that Cuthbert Grant actually perpetrated the murder by shooting Governor Semple. Governor Semple's peaceable intentions were evident from the small number of persons he took with him and the manner in which they went out. Grant's intentions were so unequivocally expressed in a letter of his own, that the Jury could not hesitate in declaring that malice aforethought did exist in his mind.

Mr. Sherwood wished that some difficulties might be settled before the examination of the evidence; he objected to any evidence being entered into against the absent principals which might bear upon the accessories. After some discussion the Court over-ruled the objection, on the ground that it would be impossible to convict the accessories without admitting evidence to establish the guilt of the absent principals, and that if this course involved any inconvenience to the prisoners, they had brought the difficulty on themselves by insisting on being tried before the conviction of the principals.

MICHAEL HEDEN, *sworn.**Examined by the ATTORNEY-GENERAL.*

Heden. I was living, in the year 1816, and during the summer of that year, at a place called Red River, in the Indian territory. I was there in the month of June, in the capacity of a servant in the Settlement. I was a blacksmith. We were compelled, I think it was on the 23rd of that month, to leave it, by the party who attacked us on the 19th. We were warned, both by the hunters and free Canadians, that we were to be turned out of Red River; both the Indians and free men told us that we were to be attacked. On the evening of the 19th of June, perhaps about six or seven o'clock, as we had for some time before kept a watch at the fort, the man on watch gave notice that a party of armed men were going towards the Settlement. Governor Semple was alarmed, and took a spy-glass, and went to look, accompanied by Captain Rogers. He soon came down again, (I did not go with him to look,) and said the half-breeds belonging to the North-West Company were coming. He told about twenty men to take their arms and follow him, to see what those fellows were about. There were about forty servants, men, women, and children, in the fort at the time. Perhaps about thirty or forty men, now I recollect, but I am not sure. I think about twenty-eight men went out with him. I do not know how many were left, but there were, I should think, more than ten left. There were three or four pieces of cannon at the fort. Going on, at a little distance from the fort, we met some women and children running, clasping their hands, and crying; they said the half-breeds were coming, and the North-West, with carts and cannon. Going on a little farther, we met more of the settlers, men, women, and children, who said the same. Mr. Semple did not ask them to go with him, but told them to go to the fort. When Mr. Semple heard that the half-breeds had cannon with them, he sent Mr. Bourke to the fort, to get one of the pieces of ordnance, and Mr. Bourke went, but

did not return with it, that I saw. I saw only two or three horsemen at first from the fort, but at about two miles distance I saw more, and then they galloped up to us, and surrounded us in the shape of a half-moon. They were in a body and armed. I only knew Grant and Brown; they were painted, but I do not know if differently to going to war. I do not know if they paint in different ways. They formed the half-moon, and remained firm till Governor Semple was challenged by Boucher. When they had surrounded us, Boucher came from his party, and waved his hand, riding up to us at the same time; and called out, "What do you want, what do you want?" Mr. Semple said, "What do *you* want?" Boucher answered, "We want our fort." Governor Semple told him, "Well, go to your fort;" when Boucher immediately said, "No, you damned scoundrel, you have destroyed our fort." Mr. Semple said, "You rascal, do you tell me so?"

Attorney-General. What did you understand by "We want our fort?"

Heden. I do not exactly know, but as far as I can understand, it was Fort Gibraltar that he meant, which was about a mile above, at the Forks. The Governor caught hold of the reins of his bridle, and called out to some of the people to make him a prisoner. When Boucher heard that, he slid from his horse on the other side. As soon as Boucher had done so, Mr. Holte was killed by a shot from the other party, and immediately after, there was a second shot, and Governor Semple fell; these were the first shots I heard.

Attorney-General. Had any thing happened in going along, that gave you to understand what Mr. Semple's wishes were about firing?

Heden. In going along, at about a mile distance from the fort, Mr. Holte was carrying his gun carelessly, and it went off by accident. Mr. Semple reproved him, and told him that he ought not to carry his gun in that careless way, and that the other party might make a handle of it; for, says he, I do not mean any firing at all. When they were coming up to us, one Kilkenny, belonging to our party,

said, "We shall all be shot. I see there is something bad approaching: if you will give me leave," (speaking to the Governor,) "I will take down Cuthbert Grant, who is one of the heads." Governor Semple was very angry with Kilkenny, and said, "I want no firing at all." This was before Boucher challenged the Governor. None of our party were on horseback. We walked, but did not hurry; they might have got out of our way if they would, certainly, as they were on horseback, and we on foot. Mr. Semple was not on horseback.

Attorney-General. And you are sure Mr. Holte and Mr. Semple fell by shots from the other party?

Heden. Yes, by the first shot Mr. Holte fell, and then Governor Semple by the second; afterwards the firing was general, and nearly all our people were killed. One Michael Kilkenny and I were together, and he said, "Cannot we make our escape?" I said, "The Lord have mercy upon us, while there is life there is hope, let us try and make our escape." We accordingly did, and outrun the surgeon, who started with us. There were about six half-breeds had got between us and the river, they shot at us, and the surgeon fell. While they were stripping him, Mr. Bourke and nine or ten men with the artillery took their attention, and we got to the river and escaped. Kilkenny by swimming, and I and one M'Kay in a canoe. When Governor Semple fell, the people all gathered round him, though he called out to them to take care and do what they could for themselves, and directly a volley was fired, and scarce one of our party was left standing. I saw nine or ten dead bodies next day at the fort.

Attorney-General. How did you get to the fort?

Heden. After making my escape, I got to the fort in the night, and remained there. Among the dead bodies brought next day to the fort, was that of Governor Semple; there were nine or ten bodies.

Attorney-General. Did you see whether it was wounded by a musket ball?

Heden. It was mortally wounded in the left breast, but

I could not distinguish whether by a musket or not, as it was all over spear-wounds.

Attorney-General. Did you see Grant afterwards, and Perrault?

Heden. I saw Cuthbert Grant the next day, but I do not know Perrault. Grant came to the fort, and took possession of it, and ordered us away. We went on the 23rd June, in consequence. We were to take away the private property; the public was to be left behind; it was not to be moved. The fort was taken possession of on the 20th June by Cuthbert Grant and a party that came with him. It was given up to him; he was at their head, and he received it. Mr. Grant told me I could not leave Red River too soon, and on the 23rd I went away, and all the servants and settlers, men, women, and children, were all sent off on the 23rd.

Attorney-General. Do you know how many did escape?

Heden. I do not know the exact number, but there was one George Sutherland, Michael Kilkenny, Daniel M'Kay, and myself.

Attorney-General. Do you know whether Mr. Pritchard escaped, and how he effected it?

Heden. I know that Mr. Pritchard made his escape, but I could not account for him; I cannot tell how. We went off in boats, but without any guard, though a guard had been promised us. We were sent down the river to take our chance, without any protection at all. On the 24th, at day-light, we met a number of canoes with Mr. M'Leod; there were ten canoes, with ten people in each. Mr. M'Leod inquired whether Mr. Semple, and that rascal Robertson were there, and Mr. Pritchard, I believe, said they were not. We were then all ordered to be put on shore, and our trunks and things were all overhauled, and our papers taken from us. I do not know what was the reason for keeping our papers. We went on to Netley Creek, and Mr. M'Leod with us, and then we were overhauled again, and I and several others were made prisoners. Mr. Alexander M'Kenzie was there, the Emperor, as he is

generally called; a Mr. Leith, and a Mr. Haldane. Mr. John M'Donald, one of the defendants, was there.

Attorney-General. Was Simon Fraser there?

Heden. I do not know. I do not know Simon Fraser.

Attorney-General. Was Doctor M'Laughlin, or Mr. M'Gillis there?

Heden. Dr. M'Laughlin was there, but not Mr. M'Gillis.

Attorney-General. Was Mr. Siveright there?

Heden. He was not there then, I saw him the next day.

Attorney-General. He came afterwards, did he? Did the others come with Mr. M'Leod, or arrive afterwards?

Heden. I am not sure whether they came with Mr. M'Leod, as other canoes did arrive that day and the next. I saw some of Cuthbert Grant's party arrive at Netley Creek whilst I was there. I saw a clerk, named Fraser, and others arrive. Fraser was one of those who was in the battle of the 19th June.

Attorney-General. Was you present at any [*the*] conversation between the three that you have identified, and the half-breeds who arrived from Fort Douglas?

Heden. No, I was not. I did not hear any. I do not know of any presents being made to the half-breeds. I do not know that rum and tobacco were served out to them. I did not see any of the clothes that had been worn by our people on the 19th, on these half-breeds. We were sent to Point au Foudre*, and kept a few days, and then sent on to Fort William. At Point au Foudre Mr. M'Leod asked me about Mr. Cameron, who had been made a prisoner; and then shortly after I was put in irons, and sent to Fort William, and afterwards to Montreal, being kept at Fort William only a few days.

Attorney-General. Is there, Heden, any other circumstance connected with this affair, that you remember, relative to which you have not been examined, but which you desire to mention? If there is, relate it now.

Heden. I do not recollect any thing else.

* This is a name given by the Canadians to a place called elsewhere in these Trials, Bas de la Rivière Winnipeg.

Cross-Examined by Mr. SHERWOOD.

Mr. Sherwood. You have, I think, told us that you was in the service of the Hudson's Bay Company on the 19th June?

Heden. I was in their service.

Mr. Sherwood. And you was put under recognizance, and taken to Netley Creek, and thence sent to Fort William, and afterwards to Montreal?

Heden. Yes, I was. I was sent a prisoner to Montreal, from Fort William, under a warrant from Mr. M'Gillivray.

Mr. Sherwood. And you made oath to a long paper before Mr. M'Cord, the Magistrate there.

Heden. I did take my oath before Mr. M'Cord. I made a deposition.

Mr. Sherwood. You read, I suppose?

Heden. Yes, I read a little, but not much.

Mr. Sherwood. Did you ever read your own deposition in a book, or do you know that it was printed in a book?

Heden. I do not know that I ever read it. I heard it was printed.

Mr. Sherwood. How came it to be printed? Did you take it to a printer to get it published?

Heden. I do not know how it was printed. I did not take it to any printer myself to have it published.

Mr. Sherwood. I suppose you do not happen to know how a Magistrate came to publish in a printed book the King's evidence?

Heden. I do not know any thing about it.

Mr. Sherwood. Do you happen to know, that when you met Mr. M'Leod and his party they were coming from Montreal?

Heden. I do not know that they came from there. I was told they did, but I do not know that they came from here.

Mr. Sherwood. Do you know what route they were going to take, or what party Mr. M'Leod joined?

Heden. I know nothing about their route at all, nor do I know any thing about what party Mr. M'Leod joined.

Mr. Sherwood. I think you said in your examination by the Attorney-General, that you were sure you saw Doctor M'Laughlin and Mr. John M'Donald at Netley Creek; did I understand you right?

Heden. Yes, I did say I saw them there, and I did see them.

Mr. Sherwood. Recollect yourself; when did you see them?

Heden. I cannot be sure whether it was the first or second day, but I am sure that I did see them both at Netley Creek.

Mr. Sherwood. And all you have sworn to is as true as this?

Heden. I have only sworn to the truth; all is true.

Mr. Sherwood. Answer my question, for you perfectly understand it. I am not asking you whether it is all true that you have been telling, but I ask you, is it all as true as this, that you saw Doctor M'Laughlin and Mr. John M'Donald at Netley Creek, or Rivière aux Morts, the first or second day after your arrival there?

Heden. Yes, that is true, and it is all as true that I have sworn to.

Mr. Sherwood. Can you swear what papers were taken away from you? were any taken from you individually?

Heden. There were none taken from me, but there were from some of our party. I saw them being overhauled, and some were kept, and some returned.

Mr. Sherwood. And is that as true as that the gun and blanket were stolen from you, which you swore to the other day, and the jury refused to believe; was it as true as that?

Heden. I will not answer that question, except I am forced.

Mr. Sherwood. Why not?

Heden. Because I do not think you have a right to put it.

Attorney-General. I really should submit, my Lord, that the learned Gentleman ought to confine his cross-examination to the case before the Court, and not harass a witness by questions no way relevant to this trial.

Mr. Sherwood. If corrected by the Court, I shall of course bow to its authority, but Mr. Attorney-General must permit me to conduct my own cross-examination. I shall repeat the question.

Heden. I won't answer that about the gun and blanket, except I am forced by the Court.

Court. We shall not force you to answer it.

Mr. Sherwood. Of course I do not put it then. You have spoken of some persons arriving at Netley Creek from Fort Douglas, and that these gentlemen appeared glad to see their acquaintances, and that they gave the labouring people some tobacco, and a glass of rum. Do you know how long that has been the crime of being accessory to murder?

Heden. No, I do not know.

Mr. Sherwood. Tell us again what passed when the people came from Fort Douglas?

Heden. When the people arrived at Netley Creek from Fort Douglas, there was a great shaking of hands, and rum and tobacco was served out.

Mr. Sherwood. Are you sure it was to the people who came from Fort Douglas that this good cheer was given?

Heden. Yes, I am sure they came from there, and had been in the battle of the 19th June.

Mr. Sherwood. Well, did you see any thing on the part of these gentlemen like assisting or helping to commit a murder, either individually or collectively? look at them all, and tell us if any of them helped to commit a murder?

Heden. I did not see any of them helping to commit a murder.

Mr. Sherwood. Did you see any thing on the part of Mr. Siveright, that was like helping to commit a murder?

Heden. I did not see Mr. Siveright at all.

Mr. Sherwood. You spoke in your examination in chief, of your being completely surrounded by the half-breeds; was that the case? Were you entirely surrounded, or was there an opportunity for you to have got to the fort, if you had wished to have done so?

Heden. I did not say, nor intend to say, they surround-

ed us completely ; they formed a half-circle, and cut us off from the river, by getting between us and the river, but there was still an opening between us and the fort.

Mr. Sherwood. Now, recollect yourself well. I ask you, was not the first shot fired from your side, or do you in fact know on which side it was fired?

Heden. There were two shots fired before there was one from our party, by the Bois-brulés, if you except Mr. Holte's gun, which went off some time before, and quite by accident. The two first shots were fired by the half-breed party, and by them Mr. Holte and Mr. Semple fell.

Mr. Sherwood. And every thing you have sworn to to-day is as true as this is, is it?

Heden. It is all true, as far as I know.

Mr. Sherwood. That is not what I ask you. My question is this, is every thing you have sworn to to-day as true as that the half-breeds on the 19th of June fired two shots before your party fired one?

Heden. It is all true that I have said, as far as I know.

Mr. Sherwood. I will have this question answered; this is nothing about the blanket and gun. I will repeat the question to you, and you shall answer it.

Heden. There were two shots coming, as I believe, from the same quarter, and I think by the smoke and the reports, from the half-breeds, and by them Mr. Semple and Mr. Holte fell, and therefore I say, I think the half-breeds fired first.

Mr. Sherwood. That is very different from what he said before. I will therefore again put the question; have you never said that your party fired first, to any body whatever?

Heden. I do not believe I have. I do not recollect that I ever did.

Mr. Sherwood. Cannot you recollect whether you ever said to any one that your party fired the first shot? I do not inquire whether they actually did so, but have you never said that they did? Recollect yourself, and tell the truth.

(The Witness did not reply immediately.)

Attorney-General. I should be extremely sorry to object to any course of cross-examination, except such as has the appearance of ill-treatment or incivility towards a witness, and I cannot refrain from saying, that I do not consider the questions put to this man by any means fair, but on the contrary extremely irrelevant, and such as are calculated to confuse the witness, without promoting the ends of justice.

Mr. Sherwood. The doctrine advanced by Mr. Attorney-General amounts to this, that he only is the proper judge of suitable questions in cross-examining a witness, and that no more must be obtained from a witness than meets his approbation. If this is to be tolerated, we shall have no more of the truth than what such witnesses as this may choose to give us of their own accord; which may suit the views of some persons, but is not satisfactory to us, who are desirous that the whole truth may appear.

Attorney-General. I am sincerely desirous that the whole truth may appear, and I have merely said, that if the man is not bothered, I believe the whole that he knows will be obtained from him; but if, by a series of questions no way bearing on the case, the man is to be confused, it is very improbable that satisfactory testimony will be obtained relative to the firing; all that the witness has ever presumed to say is, that he heard two shots and then a general firing, but that the shots were so instantaneous by which Mr. Holte and Mr. Semple fell, and the general firing so immediately followed them, that he could only judge from seeing the smoke and hearing the reports.

Mr. Sherwood. I have no wish to delay time, I will therefore merely put the question to him, not as to who did fire first, but whether he ever said who fired first? Did you, when you returned from the battle, say to any body, "It was our party, or Governor Semple's party, who fired first?"

Heden. I do not know what I might have said when I came out of the battle, I was so confused; I do not recollect that I said so, or any thing like it, but I was so confused, I do not know what I might have said.

Mr. Sherwood. I have but this question to put to you. Have you ever to any body, within a few months, in this very town of York, said that your party fired first, and that you deserved what you got, for that you would have served them the same if you could?

Heden. I do not recollect that I have. I do not think I have.

Mr. Sherwood. One more question. Do you happen to know whether there were any of the Bois-brulés killed in this affair of the 19th June? — — —

Heden. I do not know as a fact that there were any. I heard that there was one man killed on the side of the Bois-brulés, but I do not know it of my own knowledge.

DONALD M'KAY, *sworn.*

Examined by the SOLICITOR-GENERAL.

M'Kay. I was ordered, in the spring of 1816, by Mr. Semple, to go to Qui Appelle. I went, and on my return I was taken prisoner by Cuthbert Grant, Thomas M'Kay, and several others, and carried back to the North-West fort at Qui Appelle, and remained there a prisoner for three or four days. Whilst there, I heard the people talk of an intended expedition to Red River. I particularly heard one Francis Deschamps speak of it, besides others who were there.

Solicitor-General. Do you know Mr. Alexander Macdonell of Qui Appelle?

M'Kay. I do, he was at the head at Fort Qui Appelle.

Solicitor-General. Did you hear any speech made by him, or know of any speech being made by him, in going down, or at Qui Appelle, to the Indians and half-breeds, or by any body else?

M'Kay. I did not hear any, nor I do not know of any being made by Mr. Macdonell. I heard Deschamps frequently say that the Brulés collected at Qui Appelle, were going down to kill the settlers at Red River.

Solicitor-General. Might it not be to disperse them, that he said?

M'Kay. No, he did not; he said those same words, to kill them. I heard him frequently say so. I was kept at Fort Qui Appelle three or four days, and then we marched to Brandon House. I met a good many persons there, and amongst others, Boucher was there, and we talked about my having been taken prisoner at Qui Appelle. I said we had plenty more at the fort and Settlement, to which he answered, they were soon going down, and would completely destroy the Settlement and the fort altogether.

Mr. Sherwood and Mr. Livius Sherwood contended, that the intentions or orders of any persons not named in the indictment could not be brought forward in evidence against the prisoners, as amounting only to hearsay.

The Attorney and Solicitor-General said, that they did not consider it necessary for their case to inquire further into any conversation with Boucher, but that they should pursue the examination in respect of Macdonell and Fraser, although not named in the indictment, for though the orders were given by a person not named in the indictment, if they were accepted by a person named therein, he shewed by his adoption of them, malice aforethought, which it was competent to them to prove.

The Court desired the examination might proceed.

Solicitor-General. Did you, M'Kay, hear Mr. Macdonell make a speech to the Indians, and what did he say?

M'Kay. I did not hear any in particular. When Mr. Macdonell was speaking to the Indians I could not understand him, because he spoke in French. Afterwards I went to Fort Douglas, and found it was rumoured there that they were to be attacked. I remained there till the 19th June, and I was there on that day. Towards the evening of that day, the man at the watch-house in the fort called out that there were a party of men on horseback, coming down towards the Settlement. Governor Semple hearing the alarm, took his spy-glass, and with one or two of the gentlemen went into the watch-house, and saw them himself. He came out and told about twenty of us to get our arms and follow him, which we did. When we got about a

mile from the fort, we met some women running, and crying that they were making to the Settlement, and had got carts with cannon; and going on a little farther, we met more settlers, who told us the same thing, and that they had taken some prisoners. Mr. Semple sent Mr. Bourke back to the fort for a piece of cannon that was there, and to get as many men as Mr. Macdonell, who had been left at the fort, could spare. We did not wait for the cannon. Upon coming near to the party on horseback, we saw that they intended to surround us, for they divided into two parties, and the one got between us and the river, and the other between us and the fort. When the horsemen began to gallop towards us, we stopped, and when they came near to us, they separated, and one party came across the road, and met the other, who had kept by the river's edge, and formed a sort of half-circle round us, and between us and the river and fort. We were scattered about and standing just as we chose. Mr. Semple, I think, was in front of the party. Boucher came over from his party to the Governor. I cannot say I saw him ride up to him, but I saw him in conversation with him. I could not hear what passed between them, but shortly after, I saw the Governor take hold of the butt of Boucher's gun, and I immediately heard a shot, which came too near me, and I turned back and saw that Mr. Holte was wounded, and afterwards I saw that Mr. Semple had fallen; there was another shot which I heard directly after the first, and it was not till after the second, that I saw Mr. Semple down, but the two were close upon one another, indeed immediately after one another. The Governor told the men to take care of themselves; they had gathered round him upon seeing that he was wounded, and immediately after there was a volley fired, and I saw very few of our people standing.

Solicitor-General. Was there any firing after that?

M'Kay. Yes, there was, but not in a volley; there were a few guns fired afterwards. One Michael Kilkenny, myself, and Heden, ran towards the river, and were fol-

lowed by some men; one, who was armed with a spear, being very close to me, I fired at him, and so got away.

Solicitor-General. Did you meet with Mr. Bourke in going towards the river or hear any thing of him?

M'Kay. I did not see Mr. Bourke, but I heard that he was wounded by a shot. We got into an old batteau, and got across the river, and then went to the fort in the night. Mr. Pritchard, who had been taken prisoner by the half-breeds, came to the fort, with a proposal to give it up, which was represented to Mr. Macdonell, and by him to the settlers and people who were there, but at first they would not agree to give it up; afterwards Cuthbert Grant and Fraser (Alexander Fraser) came with a large party, and it was given up to them, and we were all to go away. We went away on the 24th, I think. We all went away from Fort Douglas, and were to try and get to some of the Hudson's Bay posts at a distance from the Red River country; but we met Mr. M'Leod and a large party, consisting of nine canoes and a batteau. Mr. Alexander M'Kenzie and Doctor M'Laughlin were there.

Solicitor-General. Did you see any of the others there?

M'Kay. No, I do not recollect that I did. We were ordered all on shore and were examined, that is, a good many of us were examined, and afterwards we went to Netley Creek, where both parties encamped. Whilst there, some of the half-breeds arrived from Red River; I mean some of the party who were engaged in the battle of the 19th June. They were well received. I did not see any rewards or presents given to them. I did not see Cuthbert Grant after the 19th. I do not recollect of seeing Morain at Netley Creek, but I saw him afterwards at Point au Foutre, in company with those who had come from Red River.

Solicitor-General. Did you see any thing done by either of those gentlemen (*the whole of the defendants*) that was like giving countenance to persons who had committed murder?

M'Kay. No, I cannot say that I did.

Cross-Examination, conducted by Mr. LIVIUS SHERWOOD.

Mr. Livius Sherwood. You have said, that when the half-breed party saw you they galloped up and surrounded you; where were they at that time? who were nearest to the fort?

M'Kay. We were nearest, as they were below us. They came nearly up to us, and then divided, and got behind us, and formed a half-circle.

Mr. L. Sherwood. Did they get between you and the fort?

M'Kay. Yes, they were below us, and one party went before us to the river, and one passed behind us, getting between us and the fort.

Mr. L. Sherwood. Why then they cut off your retreat, if they got between you and the fort?

M'Kay. Yes, they did. We could not get to the fort.

Mr. L. Sherwood. Might you not be mistaken as to that?

M'Kay. No, I could not. I am sure they surrounded us in a half-circle, one party going to the edge of the river, the other passed between us and the fort, and then joined them, and formed a sort of half-moon, cutting off our retreat.

(The Court directed Mr. Sherwood to wait whilst they made a reference to Heden's testimony upon this point. After some conversation between the Judges, the examination was continued).

Mr. L. Sherwood. What language did you say Mr. Alexander Macdonell spoke in, when he addressed the Indians?

M'Kay. Mr. Macdonell spoke French; when he made speeches to the Indians, he always spoke French to them.

Mr. L. Sherwood. Do you understand French, so as to tell us what he said to them?

M'Kay. I do not understand French much, and cannot tell what he said to them. I do not understand French so as to speak it.

Mr. L. Sherwood. Where was Mr. Macdonell when he spoke French to the Indians?

M^cKay. He was amongst them; standing in the middle of them.

Mr. L. Sherwood. Did the Indians understand French?

M^cKay. I cannot say; they pretty generally do.

Re-examined by the SOLICITOR-GENERAL.

Solicitor-General. Was there an interpreter among the party that set out with Mr. Macdonell from Qui Appelle?

M^cKay. Yes, there were interpreters with us. I do not know if what Mr. Macdonell said to the Indians was interpreted. I cannot say whether it was or not.

Solicitor-General. If the Indians had not understood what was said to them in French, could it have been translated into Indian to them by the interpreters?

M^cKay. It could certainly, but I do not know that it was.

Solicitor-General. Are you sure that the Brulés were between you and the fort, so that you could not get to it without passing through them?

M^cKay. Yes; they surrounded us on every side; at first they were before us, and then they divided into two parties, one going round by the river, and stretching beyond us, and the other, going round the other end of our line, got between us and the fort, and so cut off our retreat, that we could not get to it without passing through them.

Solicitor-General. Then the wing extended so far as completely to cut off your retreat or passage to the fort?

M^cKay. Yes, it did. There was no passage to it but by passing through the Brulés. I am sure there was not.

JOHN P. BOURKE, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Bourke. I was at the Red River Settlement in 1816, and in the capacity of storekeeper to the colony established by the Earl of Selkirk. I was there on the 19th

June, and at about five or six o'clock, the persons on watch called out that the half-breeds were in sight, and were making towards the Settlement. I went and looked myself, and saw a party on horseback going towards the Settlement. Governor Semple and a number of others went out to see what they were about, or what they wanted. We had for some time been obliged to keep a watch, because we expected to be attacked; we had information that a large armed force were collecting at the North-West fort on River Qui Appelle, and that they were coming down to destroy the Settlement. Indeed we heard that they had set off for that purpose. Mr. Semple, and from twenty to twenty-five of us, set out from the fort. We had not gone far when we met a number of women running in terror towards the fort, crying that the half-breeds were come, and had carts and cannon. I believe they mentioned the North-West servants. I think they said the half-breeds and North-West people. We went on a little farther, and then met more of the settlers, crying in the same way, saying the half-breeds were coming down upon the Settlement with carts and cannon. Upon hearing this, Mr. Semple directed me to go back to the fort and get a piece of ordnance that was there, and to tell Mr. Macdonell to send as many men as he could spare along with the cannon.

Attorney-General. How many men were there at the fort, at the time you saw the half-breeds?

Mr. Bourké. I think there were about forty or fifty, perhaps less, perhaps more. I believe that about as many were left behind as went out with Mr. Semple, but I could not be sure. Mr. Semple did not take all the men with him that he might have done; he told about twenty to follow him, more were going, but he hindered them; he could have taken from forty to fifty able men, had he wished to do so. We might as well have taken the cannon at first, as have got it afterwards, but we did not take any. It was not till the people told us the half-breeds had cannon that I was sent to get one.

Attorney-General. Were you put into rank, or order of march, or did you load your guns?

Mr. Bourke. No, we were not, nor did we load our guns.

Attorney-General. Your sole object in going out was to see who the party of horsemen were, and what they wanted?

Mr. Bourke. That was all, and if Mr. Semple had not been there, Mr. Macdonell would have gone. Capt. Rogers, Mr. White, and Mr. Holte went with him. There were no orders given by Mr. Semple, or by any other person that I heard, to attack them, nor did I see any thing like an intention to do so. We went out to see who they were, and what they wanted, and when we met the people in terror crying that the half-breeds were coming with cannon, I went to the fort to get one, and I did not afterwards join the party. After obtaining the cannon, I was returning, and I saw the horsemen gallop up towards Mr. Semple and his party. Mr. Semple had not reached the end of the Settlement when they surrounded him. I was then on horseback, and could command a view of the whole. I did not advance farther, for just as the party surrounded Mr. Semple, I saw a flash from a person who was mounted, and then immediately after a second, and directly a general firing took place. I was afraid lest I should be intercepted with the cannon, and determined to return with it. I went back part of the way with it, and meeting some men coming from the fort, I sent the cannon back with the man who drove the cart, and returned to where I expected to find Mr. Semple, with the men who by this time had joined me.

Attorney-General. The circle that you spoke of just now, did it extend completely to the river?

Mr. Bourke. No, it did not, there were woods on the bank of the river, so that it did not stretch to the banks.

Attorney-General. Could your party have got back to the fort, if you had not been prevented by the half-breeds?

Mr. Bourke. Certainly they might, if the half-circle had stood still, and not fired upon them.

Attorney-General. But if the party of horsemen were between you and the fort, you could not get there, could you?

Mr. Sherwood. I object to Mr. Attorney-General putting leading questions to this witness. His testimony and Heden's upon this very material circumstance directly contradict one another, and Mr. Attorney-General must not tell the witness what Heden has sworn to.

Attorney-General. I have no wish to do so. I merely want to ascertain the fact. What do you say you did with the cannon?

Mr. Bourke. I was afraid that I should be intercepted with it, and I sent it back to the fort, and returned with some men towards the place where I expected to find Governor Semple. Going along I met some men belonging to the opposite party, who called out to me in English to come on, saying the Governor was there, and wanted me. I however did not go up to them, but turned back, and tried to make my escape; as we were running away, we were fired at, and I was wounded, and a man named M'Naughton was killed. I however escaped to the fort, and on arriving there, or some little time afterwards, I heard that Governor Semple and all who were with him but four or five, had been murdered.

Attorney-General. I thought you said you was on horseback?

Mr. Bourke. I had sent my horse back to the fort.

Attorney-General. How did you get to the fort, being on foot and wounded, and they on horseback?

Mr. Bourke. They were dismounted and on foot then; they called out to me to give up my arms, which I refused to do, and run away, and they fired at me and wounded me. Duncan M'Naughton was killed by a shot about the same time. I did not see Cuthbert Grant among the half-breed party on the 19th June, so as to distinguish him. On the next day Cuthbert Grant and Fraser, I believe, came to Fort Douglas. I was wounded and up stairs. I however crawled out of bed, and saw a large party, about sixteen or twenty, apparently under the command of Grant, who insisted, I

believe, on every thing being given up to them, and that the settlers should all go away. I did not hear all that passed, but understood we were to leave the Settlement, and we did leave it on the 23d, I believe. As I understood, and as it was generally understood, we were granted our lives upon condition that we all left the Red River country, and gave up all the public property and Lord Selkirk's property. Upon these conditions we were permitted to go, and Cuthbert Grant promised to furnish us a guard to protect us from other parties of *Bois-brulés* who were expected. We went away in boats guarded by François Firmin Boucher. Cuthbert Grant did not go. I do not know if Morain did; he might perhaps, but I do not know him. On the second day after we left Fort Douglas, we met some canoes with a number of North-West partners and men: among them were Mr. Norman M'Leod, Mr. Alexander M'Kenzie (commonly called the Emperor), Mr. John M'Donald, Mr. M'Gillis, Mr. James Leith, and a number of other partners. We met them before we came to Netley Creek. When met we them they set up the Indian war-whoop, and when we got close to them, they asked if Mr. Semple was of the party; this was done in a very insulting manner. They inquired if that scoundrel Robertson was there, and that rascal Pritchard. Being informed that Mr. Semple was killed, and of the melancholy affair of the 19th of June, they made us put to the shore. Mr. M'Leod ordered us to go. When we got on shore we had all our trunks searched, and after that they made us go to Netley Creek. This party was armed. When we approached them they appeared to be loading their guns; they also had two pieces of artillery, which had been stolen from the colony the year before by the settlers, and taken to the North-West fort. There were half-breeds in their party, but not in ours, but they were not any of those who were in the affray.

Attorney-General. You know Cuthbert Grant; did he, at Fort Douglas, tell you what his intentions were in coming down with this armed party?

Mr. Bourke. No, he did not tell me his intention,

except with reference to Mr. Colin Robertson, whom Grant said, had he got hold of, by God, he would have him scalped.

Attorney-General. Was any thing taken from the people, or was it merely a search that was made among your trunks?

Mr. Bourke. They took what they liked, we were completely at their mercy; they took a good deal of property from me, which I asked for, but it was refused.

Attorney-General. When you communicated the particulars of the horrid affray of the 19th June, and its melancholy termination, did they appear sorry or concerned about it?

Mr. Bourke. No, they did not appear at all sorry; on the contrary, they all appeared very well pleased with the news.

Attorney-General. Did the party with Mr. M'Leod, appear short of provisions?

Mr. Bourke. No, they had plenty; they did not express any surprise at not meeting provisions. I never heard them even say they expected them, nor do I believe that they did. Netley Creek is about fifty or sixty miles from Fort Douglas. An encampment was made, and all the settlers kept till the next morning, when I was arrested; Mr. Pritchard had been before. Michael Heden, Daniel M'Kay, one Corcoran, Mr. Pritchard, and myself, were made prisoners. I was not allowed to speak about the affair of the 19th June. I wanted to relate what I knew to Mr. Norman M'Leod, but I was not permitted. I was confined by my wound, so that I was unable to go about the encampment. We were treated with every insult and inhumanity. I was very bad from my wound, but could get no medicine, nor any thing done for my sore, and all my clothes were afterwards taken from me. A party of half-breeds came from Fort Douglas, and among them were Fraser and others who were at the massacre on the 19th June. I noticed Alexander Fraser particularly, and besides him there were some of the others who took possession of Fort Douglas on the 20th, and whom we left

there on the 23rd, when we came away from that place under the guard of Boucher. Cuthbert Grant did not come with them. Relative to telling any of them that these people had been engaged on the 19th, and had afterwards taken possession of Fort Douglas, and sent us away, I certainly did not communicate with the defendants, but they must have known it, for every body knew it that was there. I did not tell either Mr. M'Kenzie, Dr. M'Laughlin, or Mr. M'Donald, three who came with Norman M'Leod, but my fellow-prisoners did. I know Siveright, but he was not at Netley Creek, nor at the taking of Fort Douglas. After a few days, the settlers pursued their route towards Hudson's Bay. Myself and the four I have mentioned, were detained prisoners at Netley Creek.

Attorney-General. Did you leave Netley Creek in company with these gentlemen now under trial, or those you have named?

Mr. Bourke. I did leave it in their company, and went a prisoner to Bas de la Rivière. I cannot say I left it in their company, but they left it at the same time that I did, and I saw them afterwards at Bas de la Rivière. I saw Mr. M'Leod and the most of the gentlemen I had seen before at Netley Creek, and I saw some of the half-breeds who had been at Fort Douglas on the 20th June. We were afterwards taken to Fort William. Before we went to Fort William I was put in irons. Irons were put on my hands; and all my clothing, a case of instruments, and my watch, were taken from me. Mr. M'Gillis came with the party, and I saw him afterwards at Bas de la Rivière, and at the same time I saw there Alexander Fraser, and two others who came from Fort Douglas to Netley Creek. Mr. M'Gillis was there, and so was Mr. John M'Donald. I was a prisoner during the whole of the time. I saw Hugh M'Gillis at Netley Creek afterwards; I do not recollect that I saw Simon Fraser among them.

Attorney-General. Although you did not tell any of the defendants that these people, who arrived at Netley Creek from Fort Douglas, had been engaged in the affair

of the 19th June, and afterwards had sent you out of the Red River country, yet you have no doubt but they were acquainted with all the circumstances?

Mr. Bourke. I have none at all, for it was the common topic of conversation at all times upon our passage to Fort William. I have heard the partners, and amongst them some who are now at the bar, frequently talking about the destruction of the colony, and the murders of the 19th June. I particularly heard Mr. M'Gillis and Mr. Alexander Macdonell in conversation on the subject. Macdonell asked M'Gillis what had been his plan to destroy the Settlement, to which M'Gillis answered that he would have attacked the fort at once; to this Alexander Macdonell replied, "if you had, there would have been "one half of you killed."

Attorney-General. Let us know more particularly about this conversation, for it appears to be very important. Where did it occur?

Mr. Bourke. It was whilst we were on our way to Fort William. We were within a few days' journey of the Lake called La Pluie, when, late one night I was in my tent, and heard a conversation between a number of the partners of the North-West Company who were standing by a fire. I did not hear the whole of it, but some parts, which were spoken in a high tone of voice, I distinctly heard. There were a number of the partners together, but I cannot say who they were, but I know Mr. M'Gillis and Alexander Macdonell were two who were present at the time. I heard Mr. Macdonell—

Attorney-General. Was it Alexander Macdonell, who was at Qui Appelle, that you are speaking of?

Mr. Bourke. Yes, it is the same person. I heard him, in this conversation, say, that the sending down the half-breeds was certainly carrying things to extremities, but that it could be said that our people had gone out of the fort to attack the half-breed party, and by that means met their fate. Mr. Macdonell asked Mr. M'Gillis what was the plan which we would have taken to destroy the Settlement, and he replied that his plan was to attack Fort

Douglas at once, or immediately; to which Mr. Macdonell said, that if they had, they would one half of them have been killed, as the fort was fortified. Mr. M'Gillis then asked Mr. Macdonell what had been his plan; to which Macdonell answered, he had proposed to starve the fort, as they had only a few bags of pemican. There was a good deal more said, but that was all I heard about the affair of the 19th June. I was taken to Fort William, where I was kept a close prisoner, in the most horrid manner, in a place that had been a privy, and into which no light was admitted but what came through the crevices, between the logs of which the building was constructed. I was kept in this place above twenty days, and was then taken to Montreal.

Attorney-General. Was any thing said by Mr. M'Gillis about the murders which were committed on the 19th June?

Mr. Bourke. I did not hear any thing.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. You, Sir, I believe, came out to the Indian country from Europe in the service of the Hudson's Bay Company?

Mr. Bourke. I came out under Lord Selkirk's protection, and not in the service of the Hudson's Bay Company.

Mr. Sherwood. Do you not know that the Earl of Selkirk is the principal proprietor, that he is at the head of the Hudson's Bay Company?

Mr. Bourke. No, I do not; I do not know any such thing.

Mr. Sherwood. Do you not know that he is a partner in the Hudson's Bay Company?

Mr. Bourke. No, I do not. I never saw any writing, or any thing by which I am able to say that he is a partner.

Mr. Sherwood. Well, Sir, though you have never seen the Deed of Partnership (which I did not suspect you had), did you ever hear that Lord Selkirk was a partner

in the Hudson's Bay Company, or do you believe he is a partner?

Mr. Bourke. I have heard that Lord Selkirk is a partner of the Hudson's Bay Company, and I have no reason to doubt it. I do believe that he is a partner, but I do not know it.

Mr. Sherwood. But, though Lord Selkirk is a partner, yet you do not consider yourself in the service of the Hudson's Bay Company?

Mr. Bourke. Certainly I do not. I was engaged by Lord Selkirk's agent, and have always considered myself engaged in his Lordship's service.

Mr. Sherwood. You are not in the service of the Hudson's Bay Company then, you are sure?

Mr. Bourke. No, I am not, that I know of. I do not think I am.

Mr. Sherwood. You do not think? Do you not know? I suppose you know whether you are in the service of the North-West Company or not?

Mr. Bourke. I am not in the service of the North-West Company, you may depend upon that. I am in the service of the Earl of Selkirk, and, as I consider, in his service only.

Mr. Sherwood. Do you know that a few months before the 19th June, the North-West Company were in possession of a fort, called Fort Gibraltar, situated near the Forks of the Red River, about a mile from Fort Douglas?

Mr. Bourke. Yes, I do. I know Fort Gibraltar was about a mile, or not so much, from Fort Douglas.

Mr. Sherwood. Do you know that your people took possession of it, and afterwards razed it to the ground, and conveyed the materials to Fort Douglas?

Mr. Bourke. I know that it was taken by our people, but that is all I shall say about it.

The Attorney and Solicitor-General objected to this question, as tending to establish a defence to the charge of murder, by the proof of a provocation received three or four years back; in conducting the examination on the part of the prosecution, they had never left the parties.

accused, they had followed them wherever they went, because that was necessary to elucidate their conduct and thereby to ascertain their intentions; it was obvious, it could not be the object of the party to prove a state of actual irritation, such as legal rules admit in extenuation of homicide, but it was by going into a lengthened statement of difficulties, which had occurred between those two companies to blacken the conduct and character of the opposite party.

Mr. Sherwood and Mr. Livius Sherwood referred to the precedent established on the trial of Brown and Boucher on the preceding day, and supported it by the same arguments as on that occasion.

Mr. Justice Boulton. Your question, Mr. Sherwood, I think, cannot be put, for no answer that is given to it can be made evidence. It is calculated only to shew that malice did exist, and was cherished, and certainly does not, according to my idea, come within the limits of fair evidence.

Chief-Justice. The object of the prisoners' counsel cannot, I think, for a moment be concealed or misapprehended, for it is a very plain one, and a very important one for them to establish, if they have evidence to do so. They say they have the evidence, but the question is then, can the evidence be legally admitted? Their object is to shew that, what in ordinary cases would manifest a felonious intent, does not do so in this. That is undoubtedly the real object; it is obviously so. To establish this point, they go back to a certain period of time, and tracing from thence aggression upon aggression, upon the one side and upon the other, they endeavour to establish the necessity of sending an armed force to guard their provisions when under transportation. In that point of view, I did think it proper to allow them to shew that this necessity did exist, and I am not prepared to say that we went too far in permitting it. Whether the indulgence thus given was not carried beyond the limits that were intended, may also be questioned. They contend that they have a right to shew the innocence of the remainder in the same way they

did that of the others. But it is necessary to observe, that the case here is a case of accessaries; a case not exactly, as the counsel for the prisoners contend, the same as the former, for the principal may extenuate or justify his conduct in cases where a prisoner cannot that is an accessary after, for there can be no accessary before the fact, in this, or any case of murder, if upon the trial it is alleviated to manslaughter, but there may be accessaries after the fact. My opinion is, that we did right the other day, and that the same course ought to be pursued now. Let the Jury have before them all the witnesses know upon the subject. I think it is but fair that every thing should be proved that can throw any light upon the subject of these unfortunate quarrels, which led indubitably to this melancholy catastrophe. The justification for going armed, which is the main prop of the Defence, can be proved no other way than by admitting evidence that, from the state of things in that country, it was a measure of self-defence almost indispensable. If they satisfactorily establish such a state of things, then they go a great way towards meeting the charge, or at least towards accounting for their conduct in setting out armed, which, if they were not admitted to explain, might of itself be considered as furnishing strong evidence of hostile intentions. They commence with the Proclamation, as shewing that the exportation of provisions was prohibited, and they say the effects of that Proclamation, and of the attempts to enforce it, were to produce a high state of exasperated feelings among the persons accustomed to trade in that country, and that, under that state of excitement, it was not murder which was committed by the principals, and consequently the accessaries cannot be guilty of the crime of which they are accused. This state of excitement, I think they may prove, provided they never lose sight of it, but go on and shew that it never subsided, from the moment of the Proclamation being issued, up to the truly lamented affair of the 19th June; but if there is any interval allowed to be shewn, then it is a defence that must fail.

The Attorney-General said, that the utmost length he

considered that mode of defence ought to be permitted to extend itself, was to general questions as to the state of the country, and that shewing that violence was not unprovoked could never operate as a defence.

Chief-Justice. I am sorry to see the principle so completely misapprehended. If the object of the counsel for the defendants was appreciated correctly, it would appear to be a fair one. They put in a Proclamation prohibiting the exportation of provisions, and authorising their detention, if attempted to be sent out of the district over which Mr. Macdonell was Governor. They then ask, do you know of pemican belonging to the North-West Company being seized and taken from them by armed parties? The answer being in the affirmative, it is manifest that the object of this course of examination is to establish a justification of this party arming to protect their provisions, which they say it was necessary to send from Qui Appelle to meet the canoes coming from below. I cannot conceive how gentlemen can misapply observations that are so plain; I should conceive it impossible for misconception to arise as to their correct meaning.

Mr. Sherwood. May I put the question, my Lords? the object we have in view is precisely that which his Lordship has stated, and we feel ourselves completely entitled to attain it in the manner I had attempted when I was interrupted. Of my right to adopt such a course after the recent trial, I should have thought doubt could not be entertained. I beg leave, my Lords, to inquire if I may continue my cross-examination by putting the question?

Mr. Justice Boulton. A majority of the Court are of opinion that you may, though I cannot see with my learned brothers but that, if you go into an examination of whether pemican was taken, that the Attorney-General must go into a similar one, and it appears to me a line of defence very like setting up one aggression against another.

Mr. Sherwood. The line of defence, my Lords, that I propose to myself, is precisely the same line I adopted in the former trial; and I shall follow it, unless prevented by your Lordships, for Mr. Attorney-General really must not

interrupt me again. If stopped by your Lordships, I must bow with submission, and shall do so, but I apprehend I shall not be stopped. I consider this to be a part of the self-same cause, and I shall pursue the self-same course. I shall read the famous Proclamation, and shall go on from that without stopping until I arrive where I stopped before. My first question now will be, was Fort Gibraltar taken, and, when was it taken by the Hudson's Bay people?

Mr. Bourke. Fort Gibraltar was taken, I believe, in March 1816.

Mr. Sherwood. Now I do not ask you whether you were there, helping to commit the outrage, but was Michael Heden there? and to prevent any difficulty, I inform you that it is a question you must answer. The protection of the Court extends no farther than to prevent your being brought into difficulty yourself by any answer you might give to a question, but does not enable you to shield your companions or friends*.

Mr. Bourke. I believe Heden was there at the time.

Mr. Sherwood. Do you know how long it was kept possession of before it was taken down?

Mr. Bourke. I believe it was till May; I saw it up in May.

Mr. Sherwood. Was it then razed to the ground, and sent to your Fort Douglas?

Mr. Bourke. I cannot say. I did not see it taken down but I believe that it was taken down in May.

Mr. Sherwood. Leaving Fort Gibraltar, which seems an unpleasant topic to you, I will ask you when, on the 19th June, you went out of Fort Douglas and your party, whether you were not all armed with guns, bayonets, and ball-cartridge?

Mr. Bourke. I was armed, that is, I had my gun, and

* The witness could not lawfully be compelled to answer this question, because he could not state that Heden was at the taking of Fort Gibraltar without implying an acknowledgment that he was there himself. It was certainly the duty of the Court to interpose, and tell the witness, that Mr. Sherwood had said more than he was entitled to say.

we generally had guns; some might have bayonets as well as guns, but I do not know of their having ball-cartridge.

Mr. Sherwood. What had you, if you had not ball-cartridge? had you snipe-shot?

Mr. Bourke. I had powder and ball, but no cartridges.

Mr. Sherwood. Was Mr. Semple armed strongly? do you recollect his having a double-barrelled gun, and pistols?

Mr. Bourke. He had his double-barrelled gun, but I do not know of any other arms positively.

Mr. Sherwood. Will you undertake to say he had not pistols, as well as a double-barrelled gun?

Mr. Bourke. No, I will not, for very likely he had pistols.

Mr. Sherwood. You said, I think, that you saw the flashes at the time of the firing; pray, Sir, what distance was you from the scene of action?

Mr. Bourke. I suppose I might be about two miles off*.

Mr. Sherwood. And you mean to say that you could, in that country, intercepted as your view must be by trees and stumps, discern, at a distance of two miles, who fired, by seeing the flash.

Mr. Bourke. There were neither trees nor stumps to intercept the view. It was perfectly a level flat country, and I could discern plainly by the flash, whether the fire was from a person on horseback or on foot.

Mr. Sherwood. And from that you mean to say that the first fire came from the half-breed party?

Mr. Bourke. Yes, it is from that circumstance I say so.

Mr. Sherwood. How far had you proceeded after leaving Fort Douglas, before you met the gentlemen with Mr. M'Leod?

Mr. Bourke. We had gone about fifty miles, I expect, when we met them.

* From the map it appears that Mr. B. could not have been much more than one mile distant.

Mr. Sherwood. And you were then sent to Netley Creek?

Mr. Bourke. Yes, we were, and I was kept there as a prisoner.

Mr. Sherwood. I will now ask you, if Cuthbert Grant ever did commit a murder, do you know of either of those gentlemen giving him any countenance in so doing, or rewarding him?

Mr. Bourke. I believe they have. I did not see how those who came from Fort Douglas to Netley Creek were received, because I was a prisoner at the time, but I saw some of them together afterwards at Fort William, and I believe they did approve of their conduct, and I have heard that many who took part in destroying the Settlement were rewarded for so doing.

Mr. Sherwood. I am not asking you about any who were engaged on the 19th June, but I ask you, if ever Cuthbert Grant committed a murder, do you know of these gentlemen approving of his so doing? Did you ever see Cuthbert Grant and them together?

Mr. Bourke. I did not. I saw Alexander Fraser there with them, and he was one of the half-breeds who was in the affair of the 19th June.

Mr. Sherwood. I don't want to know any thing about Alexander Fraser; I asked you about Cuthbert Grant; answer the question that is put to you, and keep your own stories for some other time. Do you know that the North-West gentlemen, on going to Fort Douglas, found a great deal of their own property there?

Mr. Bourke. They did not tell me any thing about it, and I was not there when they arrived at Fort Douglas.

Mr. Sherwood. I did not ask you if they told you they found a good deal of their property, nor whether you were present at the time, but I asked you, and I ask it you again, do you know, or do you not know, that the North-West Company found a great quantity of their own property at Fort Douglas?

Mr. Bourke. I do not know what they found there, for I did not see them arrive.

Mr. Sherwood. I shall put the question again, for I

want a direct answer to it: either you do know or you do not?

The Attorney-General objected to the question, contending that it was no evidence in defence to the charge of murder, and said, that if it were allowed it would almost become his duty to account for that Proclamation, and for every other act either of Mr. Semple or any person connected with the Settlement at Red River.

Mr. Sherwood relied on the precedent of the preceding trial, the authority of which, he said, was in future cases to be a guide in investigating offences committed in that remote part of his Majesty's dominions.

The Chief-Justice said, that these circumstances were not adduced as justification of murder: they were used as accounting for what might otherwise be considered a direct and positive proof of malice prepense. It was a justification for their going armed. They shew that their property had been taken from them by armed parties, and from thence account for their being found with arms in their hands.

Mr. Sherwood. I ask for this Proclamation to be read. It is the Proclamation of Mr. Miles Macdonell, read upon the former trial. The decision of your Lordships upon this solicitation will determine whether the precedent established on the former trial is to be followed, or a new rule introduced in opposition thereto.

The Proclamation, (for which see Brown and Boucher's Trial, p. 61) was then read*.

* It would appear that henceforward the Courts of Upper Canada must admit this Proclamation to be adduced as a link of aggravation to justify the murder of any servant of the Hudson's Bay Company, committed in the Indian territory by a servant of the North-West Company, at any distance of time. This provocation, it seems, is not to be obliterated by the sacred intervention of treaties. One destruction of this devoted Settlement has been held not to have expiated it: will a second demolition suffice?

"Junonis gravis ira nec exsaturabile pectus,
Quam nec longa dies, pietas nec mitigat ulla;
Non mediâ de gente Phrygum exedisse nefandis
Urbem odiis satis est, pœnam traxisse per omnem
Reliquias; Trojæ cineres atque ossa peremptæ
Insequitur."

Mr. Sherwood. Did you, Mr. Bourke, ever hear how Mr. Miles Macdonell came to be Governor of the District of Ossiniboia? Did you ever see his commission, so as to say by what authority he was a Governor?

Mr. Bourke. I always understood that he was appointed by commission from the Honourable the Hudson's Bay Company.

Mr. Sherwood. Do you know that they possess any authority to appoint Governors, or by what authority they exercise the right of doing so?

Mr. Bourke. I have seen the Charter of the Hudson's Bay Company, which gives the Company that power.

Mr. Sherwood. We will go one step farther back. Do you know who granted them this Charter, which authorised them to appoint, or which they say authorised them to appoint, Mr. Miles Macdonell Governor?

Mr. Bourke. It was granted by King Charles the II. as I have been told, to Prince Rupert and others, and I believe gives power to the Honourable Company to appoint Governors in the territory of Hudson's Bay.

Mr. Sherwood. You never saw a commission from the Prince Regent, or his present Majesty, appointing Mr. Macdonell a Governor, did you?

Mr. Bourke. I never did. I have no knowledge of its being necessary that he should have one.

Mr. Sherwood. To whom, Sir, did you disclose your knowledge of what had passed in the Indian country? Did you make an affidavit before any body?

Mr. Bourke. Yes, I did make an affidavit. I made it before Mr. M'Cord at Montreal, after having disclosed to the Attorney-General all I knew.

Mr. Sherwood. Do you know if that affidavit has ever been printed in a book, and given to the public?

Mr. Bourke. Yes, I know that it has been printed.

Mr. Sherwood. Did you take it to the printing-office, or give directions for it to be printed?

Mr. Bourke. No, I did not give it to the printer.

Mr. Sherwood. Was your approbation asked to its being printed? Was you consulted in any way about it?

Mr. Bourke. No, I was not consulted on the subject.

Mr. Sherwood. Do you know that it is the duty of a Magistrate to keep secret the King's evidence?

Mr. Bourke. I do not know any thing about the duty of a Magistrate on that head.

Mr. Sherwood. Do you think it his duty to print depositions of witnesses, and poison the public mind against any unfortunate person who may be accused, and thereby expose him to the chance of losing his life?

The *Attorney-General* requested the Court to stop the examination of the witness, which he said was highly exceptionable.

Mr. Sherwood pronounced the act to be cruelly immoral, and insisted on his right of exposing it.

The *Attorney-General* stated that such proceedings had not been confined to one side, which statement Mr. Sherwood denied.

Mr. Sherwood. You are acquainted, I suppose, with the late Mr. Semple's hand-writing. Will you look at this letter, and tell me if it is his hand-writing? (*The letter being handed to the witness*),

Mr. Bourke. Yes, this is the hand-writing of the late Mr. Semple, and is addressed to Mr. Alexander Macdonell.

Mr. Sherwood. I move that it be read.

The Letter dated 14th May, 1816, was then read, for which see Trial of Brown and Boucher, page 77.

Mr. Sherwood. Do you know where Athabasca is?

Mr. Bourke. No, I cannot say that I do exactly.

Mr. Sherwood. Do you know that a number of your people were starved there?

Mr. Bourke. No, I cannot say that I do know it.

Mr. Sherwood. Did you ever hear that they were?

Mr. Bourke. Yes, I have heard that some were.

Mr. Sherwood. I suppose you mean you do not know its latitude and longitude. I do not ask you for that, but do you know whereabouts Athabasca is? does it bear North or South from the Red River, and is it near to, or a great distance away from the colony?

Mr. Bourke. You go towards the North to Athabasca, and it is, I believe, a long way North, but I know nothing of its latitude or longitude.

Mr. Sherwood. You was brought to Fort William afterwards, I believe: how was you treated there?

Mr. Bourke. Badly enough; I had been brought down in irons in a canoe, on the top of a large quantity of baggage, and on my arriving at Fort William, I was put into a place that had been used as a necessary, and into which no light came, except through the crevices between the logs of the building, and I was kept there twenty days, and then taken down to Montreal. I was robbed of my watch and all my clothes, and not allowed to dress my wound, which I received from their people on the 19th June.

MILES MACDONELL, *Esquire, sworn.*

Examined by the ATTORNEY-GENERAL.

Attorney-General. You, Sir, I believe were appointed Governor of the district in which Lord Selkirk's Settlement on the Red River country was, and in that capacity issued a Proclamation: will you state to us your object in so doing.

Mr. Macdonell. My object in issuing the Proclamation was to prepare the means of subsistence for a number of persons who were expected from the forts at Hudson's Bay, and from Europe, in the ensuing season, to establish themselves as settlers at the colony. I had information that a number were wintering at York and Church-hill Forts, having arrived too late to prosecute their journey to the Settlement, but they were to come on as soon as the season would admit of their travelling. I also expected a very considerable additional population for the Settlement to arrive by the Hudson's Bay ships of the next season. Apprehensive that, in the uncultivated state of the country, and its being destitute of supplies, they might suffer hardships, unless provision was made for their support, I issued the Proclamation forbidding the produce of the country to

be taken out of it, except under certain provisions. It was a general order, having no more relation to the one Company than the other; it affected both equally, and perhaps inconvenienced both, but I thought it my first duty to provide, from the lands, for those who were to settle on them; and the state of agriculture in the District affording but a very small supply, I felt myself bound to use every means in my power to secure those settlers that I knew were wintering, as well as those whom I had reason to expect in the ensuing season, from want, and I therefore issued a general order, prohibiting the exportation of produce, except so far as might be necessary for the supply of the traders actually in the country, and the Proclamation provided for their receiving, or being furnished with whatever was necessary for their supply; and they were supplied, though I felt it my imperative duty to stop provisions from being taken out of the District. I did, on one occasion seize a large quantity of provisions from a North-West station; but, afterwards, upon a requisition being made for them, I restored what was necessary, according to their own ideas, to carry on the trade. That was the nature of the Proclamation. It was only to prevent an unnecessary exportation of provisions, and to secure the rest for the use of the inhabitants, at a fair and reasonable price, according to the value in the country. The object of the Proclamation was to secure provisions, so as to prevent the emigrants from being exposed to starvation, from the unsettled, or rather uncultivated state of the country, a measure rendered necessary by the addition that was expected during the year.

Attorney-General. Upon application, Sir, were provisions returned to them, that is, were they furnished with them?

Mr. Macdonell. Yes, upon their application they were furnished. They made a requisition, and I gave them what they required, and they did not stint themselves. Any party of traders in the country could have as much provision as they themselves judged necessary for their own consumption, but I thought it my first duty to take care

of those who were immediately committed to my care; the Proclamation invited the persons having provisions to bring them in, and stated that they would be paid for at a fair price, and I was always willing to pay for them.

Attorney-General. Have the North-West Company received a remuneration for their provisions, or if they have not, to what circumstances is it to be attributed?

Mr. Macdonell. They have not received any; I believe that they would not fix any price, and therefore they could not be paid.

Attorney-General. It has been alleged, Sir, that Fort Gibraltar was taken. Had you ever experienced any ill-treatment from the residents of that fort?

Mr. Macdonell. We did, Sir, a great deal, in my time, of the most serious nature, the most unprovoked and wanton nature, from Duncan Cameron and those under his command. Our people were fired upon often when doing nothing but pursuing their work on their farms; our cattle were killed, and indeed every species of insult and outrage was constantly practised against us. I, on one occasion, as agent for Lord Selkirk, gave or addressed a notice to the person in charge at the fort, to quit the premises by a certain time, but nothing was ever done in consequence of it. Attacks of a very serious and monstrous description had been repeatedly made upon us; it is impossible to state of what description, they were so various. On one occasion, one of my gentlemen was fired at, and mortally wounded; on another, the Settlement was attacked, and afterwards burned to the ground. Every outrage that could well be offered we experienced from them. I had a commission appointing me Governor of the District of Ossiniboia, and it was in virtue of that commission that I acted in the Red River country. I received it from the Hudson's Bay Company, from the Court of Directors; it was a commission under their seal, appointing me Governor of that District.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood. You were not aware, Sir, I presume, that, in appointing you Governor, the Hudson's Bay Company were exercising authority which they did not possess, or authority that they had no right to give; that they had no right to delegate the powers you assumed yourself entitled to exercise? You, of course, esteemed your commission valid. Do you know that it was so?

Mr. Macdonell. I think it was so, or I should not have acted upon it, but I may err in judgment.

Mr. Sherwood. I am sure that is the only way Captain Macdonell would err; no person can have a higher respect for the private character of Mr. Miles Macdonell than I have, nor can any person entertain a more contemptuous one for every thing appertaining to the governorship. Will you just look at these two notices, and say, Sir, whether they were issued by you?

Mr. Macdonell. They were; my reason for issuing them was to prevent any claim of prescriptive right being set up.

Mr. Sherwood. I do not impute any improper motive to you, Mr. Macdonell; you undoubtedly thought it necessary to do so. I move that they be read.

(The following Notice to quit was then read.)

DISTRICT } To Mr. Alexander Macdonell, or the
OF } person acting for the North-West Com-
OSSINIBOIA. } pany in the vicinity of Carleton House.

TAKE NOTICE, that by the authority and on the behalf of your landlord, the Right Hon. Thomas Earl of Selkirk, I do hereby warn you and all your associates of the North-West Company, to quit the post and premises you now occupy in the vicinity of Carleton House, within six calendar months from the date hereof.

Given under my hand, at Red River Settlement, this twenty-first day of October, 1814.

(Signed) MILES MACDONELL.

A Notice in the same terms, addressed to André Poitras, at Rivière à la Sourie, was likewise read.

HUGH M'LEAN, *sworn*.

Examined by the ATTORNEY-GENERAL.

M'Lean. I lived at Fort Douglas in 1816. I knew Mr. Semple in that country; he was Governor there. We had frequently been informed that we were to be attacked by the half-breeds and North-West people. On the 19th June, as I was coming home to the fort in the evening, I saw an armed force on horseback going towards the Plains. As I got nearly up to the fort, I saw Mr. Semple and between twenty and thirty persons going out of the fort.

Attorney-General. Could you distinguish whether the people on horseback were armed?

M'Lean. I saw them at that time too far off to say whether they were armed or not; afterwards I knew they were. Mr. Semple's people were generally armed, perhaps all might be, but I cannot particularly say, for I did not go with them. I was told that Mr. Semple had taken them to see what the people wanted who were seen going to the Plains. After they had been gone some time, Mr. Bourke the storekeeper came back for a cannon, and then I went out. I went with Mr. Bourke, and drove the cannon, which was in a cart. We did not overtake Mr. Semple and his party. We went on a short distance only with it, and then I returned with the cannon to the fort, by directions of Mr. Bourke. I reached the fort in safety. I was not wounded, but the horse drawing the cannon was. I left it at the fort, and then returned. The mounted people were formed in a circle or half-circle, and our people who were on foot were on the inside of the circle; the half-breeds were formed like a half-moon. I saw both those on horseback and on foot, but I did not see any firing between them. Having left the cannon, I went out again, but had not gone far before I met about eight or ten people running as hard as they could, and they were being fired at. I found Mr. Bourke wounded: he had been looking for the Governor, and was called to by a parcel of men hid behind some bushes, to come to Governor Semple, and was then fired at and wounded.

Attorney-General. Then you reached the fort safe, did you?

M'Lean. Yes, thank God, I was not hurt any way. The next day I saw nine or ten dead bodies, and among them was the corpse of Governor Semple; they were brought to the fort in carts by the Indians. I saw Cuthbert Grant on the 20th, at the fort, with a large party of half-breeds and others. I did not hear what passed between him and our gentlemen, but I understood it was about our all going away, and giving up the fort, for we had been asked if we would give it up by our own gentlemen.

Attorney-General. Do you know John Siveright, one of the prisoners at the bar; did you ever see him before?

M'Lean. Yes, I saw him in the spring at Fort Gibraltar.

Attorney-General. Did you see him after the battle?

M'Lean. No, I do not recollect that I did. Two days after, or on the 23d, we all went away from the fort, and the Settlement was entirely broken up. We went to Jack River House by water. On the day but one after we left the fort, we met a large party in canoes; there were nine or ten large canoes full of people, and we were all ordered ashore, after some conversation between some of their party and some of ours. I saw Mr. Alexander M'Kenzie there, but I do not recollect for the others; there were, as I understood, a number of the partners of the North-West Company there, but I did not know them.

Attorney-General. Do you know of any information being given to the partners of the North-West Company by the people from Fort Douglas, of the affair of the 19th June?

M'Lean. No, I do not. I was not near enough to hear any thing that had passed between them.

Attorney-General. You have said that you saw the mounted party and those on foot at a distance. Could you distinguish any of the mounted party, so as to say who they were?

M'Lean. No, I was not near enough to see who was in the battle. I merely saw them at a distance.

Attorney-General. Were you present at any assembly

of half-breeds, where any speech or harangue was made by any body on the subject of the affair of the 19th June?

M'Lean. No, I was not. I never heard any from any body.

Cross-Examination, conducted by Mr. SHERWOOD.

M'Lean. I do not know who fired first. I know that murders were committed, because I saw the bodies.

Mr. Sherwood. What do you mean by murders being committed? would you call it murder if you killed a man in battle?

M'Lean. No, not if he was killed fairly, but these were not, for they were shot first and speared afterwards, and I don't call that killing a man in battle fairly.

Mr. Sherwood. Would you think it murder to kill a person in defence of your own life, or your property?

M'Lean. No, certainly I should not think it murder to try and save my property, or my life, and if I killed a man in doing so, it would be his fault, and not murder.

Mr. Sherwood. How do you know that these persons were not defending their lives or property on the 19th June?

M'Lean. I do not believe Mr. Sémple or his people would have meddled with them, if they had not with him.

Mr. Sherwood. Do you know, or did you ever hear, of any of these gentlemen having assisted in the murders, as you call them? do you know that any one of them assisted to commit these murders, as you think proper to call them, or were helping in any way?

M'Lean. No, I do not know that any of them did. I have heard a good deal about them.

Mr. Sherwood. What you have heard is not exactly evidence, but I dare say you have heard, and would like to tell us a great deal: but you may go.

JOHN PRITCHARD, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Pritchard. In June 1816 I lived at the Red River Settlement, at the colony of the Earl of Selkirk: I

was a settler. I knew Mr. Robert Semple; he was Governor of the Hudson's Bay Territory in general. On the 19th June Governor Semple and a number of other persons were killed. We had been alarmed with reports for some time, that the colony was to be attacked by the half-breeds. On the 17th, Moustouche and Courte Oeille, another Indian, came to the fort from the half-breeds' camp, and gave us information that we were to be attacked within two days from that time, by a party who had set off from Qui Appelle, and had stopped at Portage des Prairies, under the command of Alexander Macdonell. There were generally residing at Fort Douglas with Mr. Semple, from forty to fifty men; that was the usual number of residents.

Attorney-General. Upon receiving this information from the Indians; what did Governor Semple say or do?

Mr. Pritchard. He heard all they had to say, and examined them very particularly, but said to the gentlemen that it was impossible, after all their other depredations, that the North-West people could be so bold and unprincipled as to think of attacking the Settlement. He then desired a strict watch to be kept night and day, so as to receive the earliest information of their approach; which was done. He said he could not believe they would be so unprincipled as to break up the Settlement, and distress the poor people who were settlers, and did them no harm, whatever might be their hatred of the Company's servants (Hudson's Bay Company's servants.) As I was about returning home from writing, I heard a man cry out, "the half-breeds! the half-breeds!" this was about six o'clock in the evening, I should think. Immediately the alarm was given, and I saw Governor Semple take his spy-glass; and go to a place whence he was likely to have a good view. I went and looked too, and I distinctly saw a number of persons on horseback going towards the Plains. Shortly after, the person at the watch called out that the mounted party were making towards the Settlement. We saw they were armed. Mr. Semple then said, "we must go and see what these people want; let twenty

"follow me." Something was said by some person about more going, but he said, "no, twenty will be sufficient, let twenty come with me." About that number took our guns and went along with him. I believe there were about twenty-five or twenty-six. We had not gone far before we observed, beyond a point of wood, that the party increased very much; Mr. Semple, therefore, directed Mr. Bourke to go to the fort, and get a small piece of ordnance, and to tell Mr. Macdonell to send as many men as he could spare, and return as quick as possible. We met a number of the settlers running towards the fort, and crying, but we went on. We stopped a little while, but Mr. Bourke being delayed, we went on again towards the Settlement. We had not gone far before we observed the half-breed party advancing towards us. They came up in a direct line, and when they were pretty near up to us, they opened into two parties, and surrounded us in a half-circle or half-moon. As they advanced upon us, we went back to get out of their way. It was not to run away, but we retreated back a few steps; it was no use to run, they being on horseback, and we on foot; we then saw Boucher advancing from his party, waving his hand to us, and calling out in broken English, "What do you want? what do you want?" Mr. Semple directly said, "What do you want?" to which Boucher answered, "we want our fort." Mr. Semple replied, "go to your fort." What Boucher said then I do not know, as by this time they were close together, and spoke too low for me to hear. What the answer was I cannot tell.

Attorney-General. But what you have related you heard distinctly, did you, so as not to be mistaken?

Mr. Pritchard. Yes, I did; I heard Boucher make some reply to Mr. Semple then, but I was not near enough to hear what it was that he did say, but I saw Mr. Semple put his hand on the butt of Boucher's gun, and almost immediately there was a firing, and I saw Mr. Holte struggling on the ground, and immediately after I heard a general firing, a sort of irregular volley.

Attorney-General. Was it a single shot you first heard?

Mr. Pritchard. Yes, I heard the report of a gun, and turning round directly, I saw Mr. Holte struggling on the ground, and almost immediately there was a general firing, like an irregular volley, and nearly all our people were either killed or wounded.

Attorney-General. Can you say from which party the first shot that you heard, the single shot, came?

Mr. Pritchard. I cannot. We were in a good deal of confusion, expecting every minute to be attacked, so that I could not say from which side it came, nor I never did have any certain information who fired first. I saw Mr. M'Lean rise once, and he was defending himself when he fell a second time, and I believe expired. I saw Captain Rogers rise after he had fallen, and he came running towards me. At that time I did not see another of our people standing, and I said to Mr. Rogers, "for God's sake, throw down your arms, and give yourself up, we shall be murdered here else, we shall be murdered; for God's sake, Rogers, give yourself up." He directly threw down his arms, and ran towards the party, crying in broken French for mercy, and saying he was their prisoner. A half-breed, named M'Kay, called him a dog, and said he was one of the officers of the colony, and immediately shot him through the head, and another ripped his belly open, uttering the most horrid imprecations. I now almost gave myself up for lost, when I observed a Canadian whom I had known. I now begged of him for God's sake to try and get my life spared. I said to him, "You are a Frenchman, you are a Christian, so am I, you are a man, you are a Canadian, join with me in begging my life." He did; he begged for me, and warded off blows that were aimed at me, and received several himself in protecting me from them. M'Kay, who knew me, called me a little toad, and asked me what I did there, and said he had a great mind to serve me as he had Rogers, but eventually Lavigne succeeded in saving my life, and I was given into the care of Boucher or Morain, they telling me at the same time that I was a poor little dog, and had no great while to live. I had several very narrow escapes

afterwards. Deschamps and a number of Brulés wanted to kill me; once Boucher saved my life. When under charge of Morain, I told him that the half-breeds would kill me, when I got to the Frog Plain, and offered to give him a thousand livres, if he would let me swim over the river, and escape to the fort. He replied, "no," that I knew well if he did so, that his bourgeois would punish him. I answered, that I was aware they were displeased with me for going to the colony, but that I did not think they desired my death. Morain answered, "it is all the same, "I will keep my hold of you*."

Attorney-General. Did you see Cuthbert Crant in the battle?

Mr. Pritchard. I might have seen him, but I do not know that I did. I saw him that night, and he told me my life was safe, and whilst I was with him that I need not fear. He said that they expected to have surprised the colony, and then they would have starved out the fort, for they would have prevented any body from leaving it to get provisions, or if they had left the fort, they would have shot them; that having surprised the colony, they intended at night to have surrounded the fort.

Attorney-General. Did he say any thing about their bringing provisions down to supply the canoes that were expected from below, that is, from Fort William?

Mr. Pritchard. No, I heard nothing like that.

Attorney-General. When did you first hear about the object of this journey being to bring down provisions?

Mr. Pritchard. I never heard that assigned as the cause of their coming down, till I heard it in Lower Canada; that was the first time I ever heard of it. I know Cuthbert Grant's hand-writing very well, having frequently seen him write, as he was under me for some time when I was in the service of the North-West Company.

* This part of the evidence is mis-stated by the short-hand writer, who gives it as follows:

Once I had to beg Morain to let me save myself, though I knew the bourgeois did not like me, and after great difficulty and many very narrow escapes, I at last got to the encampment at Frog Plains.

(A letter being shewn in his hand-writing. Upon motion of the Attorney-General, the letter dated River Qui Appelle, 13th March, 1816, from Cuthbert Grant to J. D. Cameron, Esq. was read, (for which see the Trial of Boucher and Brown at p. 89).

Attorney-General. Did you, Sir, ever see that letter before, or when did you first see it?

Mr. Pritchard. It was an intercepted letter, and I have seen it frequently before, but I saw it in Mr. Semple's possession before the 19th June.

Attorney-General. What was done with you? I mean individually.

Mr. Pritchard. I was taken a prisoner, as I may say, on the 19th June, and was liberated on the 20th.

Attorney-General. When did you first go to Fort Douglas after the saving of your life?

Mr. Pritchard. I went on the same night. Grant told me whilst I was a prisoner at the Plains, that an attack was going to be made on the fort that night, and that if any resistance was made, man, woman, and child would indiscriminately be massacred. Mr. Fraser also said the same, adding, that it had been said they (the half-breeds) were blacks, and we should see that they would not belie their colour. I begged of Grant to spare the women and children, who, whatever we might have done to offend, could not have injured any body. After a great deal of difficulty, I got him to consent that, upon condition of our all going away, and giving up all public property, our lives should be spared, and I then went to Fort Douglas to carry the conditions, many of the half-breeds being very unwilling that I should be allowed to go, and warning me against the impossibility of my escaping from them, and cautioning me against attempting it. The terms were not at first agreed to, but after some consideration they were, and we prepared to go away. We went away on the evening of the 22d, having given every thing up to Cuthbert Grant, who gave a receipt for them on behalf of the North-West Company, and we proceeded on our way by water to Hudson's Bay. On the 24th we were met by Mr.

Archibald Norman M'Leod, and a large party of persons; there were nine or ten large canoes, I should think, of them. When we got near, they asked if Mr. Semple was in the party, or if Mr. Robertson was there; they asked in very opprobrious terms for Mr. Semple and Mr. Robertson, and being informed they were not, and also made acquainted with the fate of Mr. Semple and the officers of the colony, they inquired if I was there. Being informed I was, we were all ordered to put on shore, and we did so. All our papers and trunks were examined, and such of the papers kept as Mr. M'Leod, together with the other partners, chose; and I was made prisoner there.

Attorney-General. Was you personally examined relative to the affair of the 19th by Mr. M'Leod?

Mr. Pritchard. Yes, I was, and I told him all I knew. With Mr. M'Leod's party I saw Mr. Alexander M'Kenzie, and I think Mr. M'Gillis, but I am not quite sure about Mr. M'Gillis. After meeting Mr. M'Leod and his party, we encamped at a place called Netley Creek, about two miles lower down; a general encampment was made there. Whilst there, a number of those we left at Fort Douglas, and who had been engaged on the 19th June, came to Netley Creek encampment. I was a prisoner, and I cannot say how they were received, as I did not see them received. Cuthbert Grant was not among this party. Fraser was amongst them, and there were several whose names I do not recollect, but I know Grant was not one. We who were prisoners were sent to Point au Foutre, in charge of the half-breeds and others that came down from Fort Douglas, and the others went with Mr. M'Leod to Fort Douglas, as I believe, but we were not sent to Point au Foutre till Mr. M'Leod's return from Fort Douglas. I did not return to Fort Douglas. I remained at Netley Creek, and I went with Bourke, Heden, Corcoran, and M'Kay, to Point au Foutre, upon Mr. M'Leod's return to Fort Douglas, and staid there till he joined us, when we all set off together, under the direction of Mr. M'Leod, for Fort William. On Mr. M'Leod's return from Fort Douglas he brought some field-pieces and small arms belonging to the Settlement.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. Did you ever see the whole account you have been giving us, published in a book, with the affidavits of the persons who survived the 19th June, any where?

Mr. Pritchard. Yes, I have seen them in print certainly.

Mr. Sherwood. Do you know who published them, Mr. Pritchard?

Mr. Pritchard. No, I cannot say that I do know.

Mr. Sherwood. As you cannot tell who fired first on the 19th of June, of course you will not say it was not your party any more than it was. How happen you not to know?

Mr. Pritchard. I was more attentive to my own life than to who might fire first, for from the moment I saw them advance towards us I expected to be attacked.

Mr. Sherwood. You saw the letter of Cuthbert Grant, I think you say, before. How did it come into Mr. Semple's possession, it being addressed to Mr. Cameron?

Mr. Pritchard. It was intercepted by our people.

Mr. Sherwood. Do you remember, Sir, on what day Fort Gibraltar was taken; or first, I will ask you, by what authority the letter was intercepted?

Mr. Pritchard. I believe it was done by direction of Mr. Colin Robertson. Fort Gibraltar was taken the 17th March, St. Patrick's day, towards, or rather on the evening of that day.

Mr. Sherwood. There was a Mr. Holte, I think you say, among those who fell in that engagement. Was he a moderate, peaceable man, or a rash, imprudent, headstrong person?

Mr. Pritchard. There was a Lieutenant Holte, a Swede, who perished on the 19th June. He was a very fair, upright man. I cannot speak particularly of his temper.

Mr. Sherwood. Would you know his hand-writing if you were to see it, so as to enable you to say whether this letter is in his own hand-writing or not? (*the letter was*

handed to Mr. P.) is that the Mr. Holte's writing who fell in the engagement?

Mr. Pritchard. Yes, it is the late Mr. Holte's writing. (The letter from O. Holte, dated Fort Douglas, April 14, 1816, see Brown and Boucher's Trial, page 93, was then put in and read.)

Mr. Sherwood. Who was it addressed to, Sir?

Mr. Pritchard. It was addressed to myself.

Mr. Sherwood. Pray, Sir, who might be meant by "Mr. Lofty, who once injured your character?"

Mr. Pritchard. By Mr. Lofty, was meant Mr. Colin Robertson.

Mr. Sherwood. Mr. Colin Robertson was a very active man in the Hudson's Bay service, was not he? is he the gentleman who thought proper to steal the letters, or to order it to be done?

Mr. Pritchard. It was by Mr. Colin Robertson's directions that it was done.

Mr. Sherwood. Was he a servant of the Hudson's Bay Company?

Mr. Pritchard. I do not know that he was a servant.

Mr. Sherwood. Do you recollect what it was Mr. Holte alluded to, in that part where he speaks of his passions often getting the better of him, and his wishing them to the devil?

Mr. Pritchard. No, I do not at this distance of time.

Mr. Sherwood here put some questions to the witness, relative to the local situation of the North-West Company's post, commonly called Bas de la Rivière, in answer to which, Mr. Pritchard stated, that it was situated near the mouth of the River Winipic, where it falls into the Lake, and that all the canoes going into the interior, necessarily must pass near it*.

* The evidence has been strangely misrepresented in this point, in the short-hand writer's notes, as well as in the printed Report published by the North-West Company, where it is given as follows:

Mr. Sherwood. By the bottom of the River, where this man of war schooner was to be stationed, what place was meant?

Mr. Sherwood. It was in April, I think, the letter was written, and instead of giving the North-West rascals, as he calls them, the drubbing (if he could), he went into this engagement in June, his proper glory not being ready for him at the time; unfortunately for him, the North-West rascals, as he calls them, defended their own property, and gave him a drubbing. Who, Sir, is this Mr. Pambrun, Mr. Robertson's olio of perfection; is it the Mr. Pambrun we had here the other day as a witness?

Mr. Pritchard. It is the same person, I believe, who was here.

Mr. Sherwood. This olio also found Mr. Macdonell too strong for his veterans, I believe?

Mr. Pritchard. I do not know any thing about that.

Mr. Pritchard here explained to the Court, that Holte was a person in whom Governor Semple placed no confidence; that at one time he understood Governor Semple had it in contemplation to station the schooner in Red River below the Settlement, in order to repel the attack of a party of half-breeds, under the command of William Shaw and Simon M'Gillivray, who were expected to arrive by way of the Lake to assist in destroying the colony: but that this intention had been afterwards abandoned by Governor Semple, and the schooner hauled up on shore.

Mr. Pritchard. By it was meant the bottom of the River Winipic.

Mr. Sherwood. It was at that place he meant to have stopped the canoes from Fort William, had he lived long enough, I suppose, nothing could have passed from ~~on~~ to the interior, without going within reach of this man of war schooner?

Mr. Pritchard. No, every thing must pass that spot.

This misrepresentation is the more extraordinary, as the statement here put into Mr. Pritchard's mouth, is inconsistent with Holte's letter itself, which speaks of the schooner being stationed at the bottom of "this River," viz. Red River (see the letter at p. 93). It is also remarkable, that the particular explanation on the subject of the schooner, which Mr. Pritchard entered into immediately afterwards, is entirely omitted in the Report.

PATRICK CORCORAN, *sworn*.*Examined by the ATTORNEY-GENERAL.*

Corcoran. I was at Fort Qui Appelle in April 1816. I was there a prisoner, having been taken, together with a party that accompanied me, by some half-breeds, and carried to the North-West fort at Qui Appelle. Mr. Alexander Macdonell was in charge there, and there was a large collection of persons at the fort from different places; a much larger number of half-breeds were there than, I imagine, usually were stationed there. Of these half-breeds whom I saw there, I knew Cuthbert Grant and several others by sight. I knew a good many by sight, though I did not know their names. One Lacerte was there, and Antoine Hoole. I recollect them: I generally heard them call Cuthbert Grant Captain.

Attorney-General. Did you hear any reason given for so large a number of persons being at Qui Appelle?

Corcoran. I generally understood that they were collected from different parts, with an intention of going down to attack the Settlement; that was the general talk at the fort. It was not made any secret, that their object was to attack and break up the Settlement. Pangman, or Bostonois, was there at that time along with Cuthbert Grant, and Grant said they would come down to Red River, and visit Mr. Robertson, who should see what they could do.

Attorney-General. When the party set off, did you hear Mr. Macdonell give them any orders, and to whom?

Corcoran. I did not hear Mr. Macdonell give any orders, but I know that Cuthbert Grant had the command.

Attorney-General. How long were your party detained?

Corcoran. The rest of our party was soon liberated, that is, in four or five days; but myself, Jordan, and Mr. Pambrun, were detained for a good while afterwards.

Attorney-General. Was you well treated while there?

Corcoran. No, we certainly were not. I was permitted

afterwards to go, under a promise that I would not fight against the North-West Company.

Attorney-General. Did you ever inquire why you was detained?

Corcoran. I did of Mr. Macdonell himself, and he told me openly it was by his orders.

Attorney-General. Was the Settlement in want of the provisions which were taken from you at Qui Appelle?

Corcoran. Yes, they were; when we left they had only sixteen bags. At the time it was taken, Grant promised we should have one boat-load, but upon our asking Mr. Macdonell to let it be sent, he refused, and said he did not care whether they starved or not, for it was not his look-out; he began to *sacre* in French, but I could not say for certain at what, but it appeared to me that it was against me.

Attorney-General. Had Mr. Macdonell agreed to send the boat-load of provisions?

Corcoran. Yes, he did once; but when I spoke to him he did not recollect any promise of the kind.

Attorney-General. Are you confident that you heard them declare it was their intention to attack the fort?

Corcoran. Yes, I am sure I heard several say so. I heard them say they would go down, and if they caught Mr. Robertson, they would tie him to a tree and skin him alive. Cuthbert Grant said, we will send you off as we did before, and if you come back we will send you to hell, for you have no business here. All this took place in May. I was allowed to go upon condition that I did not bear arms against the North-West Company. As soon as I got to Fort Douglas, I told them all that I had seen. In consequence we kept a watch night and day, to give notice of their approach. On the 19th June, I had been at work, preparing pickets, and when my work was finished, I went to the house of M'Nolty, and shortly after the alarm was given that some half-breeds were come. I went on a little way towards the Settlement, but thinking it nothing, I returned to the fort. I saw some of our people looking out from the top of the bastion, and I saw the Governor, with

a number of people, going towards the Settlement, but I did not go with them. In a short time after I heard the firing of shots frequently.

Attorney-General. Do you know who they were who fired them?

Corcoran. No, I do not. I did not know any thing about it till some of the people came home who had gone with Mr. Semple, and I heard Heden tell about it.

Attorney-General. You must not tell us what Heden told you, but only what you saw yourself. Did you the next day see any half-breeds come to Fort Douglas?

Corcoran. Yes, on the 20th I saw a good number come to the fort, and I was then given to understand that we were all to leave it as soon as we could get ready to go, and that we were only to be allowed to take just what belonged to us, but that all the public property, with what belonged to Lord Selkirk, was to be left behind, and that it was on those terms only that our lives were spared. I saw a number of dead bodies, and amongst them was the body of Mr. Semple dead; they were brought in on the morning of the 20th, about eight or nine of them I suppose. We remained till the 24th June, and then we all went away in boats towards Hudson's Bay. The next day we met several canoes. I saw Mr. M'Kenzie in a canoe; I also saw Dr. M'Laughlin at Netley Creek, where we were afterwards sent to, but I am not sure that I saw him in a canoe. I also saw Mr. M'Donald, but I do not think he came in the same party that we met in those canoes, but I saw him at Netley Creek.

Attorney-General. Was Mr. John Siveright there?

Corcoran. I do not recollect that he was; I do not think that I saw him there. They inquired for Governor Semple and Mr. Robertson in very violent language, and being informed that Mr. Robertson was not with us, and that Mr. Semple and the others had been killed on the 19th, they inquired for Mr. Pritchard, and when they heard that he was with us, we were ordered to put ashore, which was done. Mr. Pritchard was examined personally, and his papers searched, and shortly after we were all sent to Netley

Creek, and some of their party proceeded, as I believe, to Fort Douglas, at least I understood so. Whilst we were at Netley Creek, a party of half-breeds came from Fort Douglas; some of the same that we had left in possession of it at coming away, and who, I have every reason to believe, had been engaged in the affair of the 19th June. Amongst the persons, I recollect particularly seeing Boucher, and Alexander Fraser, the one a half-breed, and the other a Canadian. They appeared to be very well received by all the gentlemen, as far as I saw. I saw them walking to and fro frequently in conversation, but I cannot say that I heard so as to remember any particulars about it.

Attorney-General. Did your people give any account of the matter to these gentlemen?

Corcoran. Yes, we gave all the particulars very frequently, as it was quite the common topic of conversation. Some said it was not true; others that it was our fault, and that of our bourgeois, and some said they were sorry for it; but they did not appear to be sorry, but rather the contrary.

Attorney-General. Do you know which of the persons it was that severally made these observations?

Corcoran. No, I cannot tell which of them it was.

Attorney-General. You have not spoken as to Mr. M'Gillis; did you see him?

Corcoran. Yes, I saw Mr. Hugh M'Gillis. I do not recollect that I saw Mr. Siveright there at all.

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood. What distance may it be from Qui Appelle to the Settlement, as your people call it, at Red River?

Corcoran. I suppose it may be about three hundred miles, but I have no particular means of judging.

Mr. Sherwood. We have heard a good deal about settlers; pray, Sir, what do you mean by settlers?

Corcoran. By settlers I mean farmers, persons who cultivate the ground. We call them the settlers.

Mr. Sherwood. Although farmers, were they accustomed to eat pemican, and glad to get it?

Corcoran. They used to eat pemican, and were glad to get it when they were hungry, I dare say.

Mr. Sherwood. Could grain, Sir, be produced in that arid climate, and of what kinds?

Corcoran. All kinds would grow there as well as here, and some better, I think.

Mr. Sherwood. Do you happen to know where the pickets you had been employed in putting up on the 19th June came from, or who they had formerly belonged to?

Corcoran. I cannot say positively, but I believe they came from the fort that was formerly at the Red River Forks.

Mr. Sherwood. Then they were part of the plundered property of Fort Gibraltar, were they not?

Corcoran. I cannot say positively that they were, but I believe they were brought from there.

Mr. Sherwood. Of what description were they? what sort of wood, I mean?

Corcoran. Some were oak, and some poplar.

Mr. Sherwood. You say you did not meet Mr. Siveright; are you sure you met the others?

Corcoran. I met the five, I am nearly confident, but Mr. Siveright I did not see.

Mr. Sherwood. Nor did you see Cuthbert Grant, nor Louis Morain, did you?

Corcoran. No, I did not see either of them.

Mr. Sherwood. I would beg, my Lords, to remark, that these gentlemen are indicted as accessaries to Grant and Morain; what passed therefore with other persons, I take it, cannot be evidence against them. I merely make the observation, but do not intend to enlarge upon it, for I believe the witness does not speak to any thing that passed between these gentlemen and any body who came from Fort Douglas. Who did you see at Netley Creek from Fort Douglas, that you suppose or know, had been engaged in the affair of the 19th June?

Corcoran. I saw Alexander Fraser, who was a half-breed, and a Canadian named Boucher, besides others whose names I do not recollect.

Mr. Sherwood. Did you hear them say that it was the fault of Governor Semple, that what occurred at Red River on the 19th June took place, and that if he had let their party alone, nothing would have happened?

Corcoran. I never heard them say it was Governor Semple's fault; indeed I do not remember that I talked with them on the subject.

Mr. Sherwood. You was one of the party that went from Fort Douglas to Qui Appelle; do you know for what purpose you went there?

Corcoran. We went to fetch provisions, and to bring down the furs which had been collected.

Mr. Sherwood. Was that your only object? Do you not know of any orders to take the North-West post at Qui Appelle, in the same way that their Fort Gibraltar had been taken?

Corcoran. No, I do not. I do not believe there were any orders of that kind given. We were to go to Brandon House, and from there proceed to the Hudson's Bay fort at Qui Appelle, if it should, upon consulting those in charge at Brandon House, be thought advisable, but we had no intention of going to the North-West post on River Qui Appelle.

Mr. Sherwood. That expedition went under command of Mr. Pambrun, who had formerly been an officer in the army?

Corcoran. Mr. Pambrun had the direction of the party.

Mr. Sherwood. Do you know any thing of Mr. Pambrun's instructions, or who he received them from?

Corcoran. I know that Mr. Pambrun had instructions, and that he received them from Governor Semple.

Mr. Sherwood. And how do you know what his instructions were? because his telling you what they were, will not do here for evidence. You said just now you

knew there was no intention to take Fort Qui Appelle : now although you had no instructions given you of that nature, how do you know what Mr. Pambrun received?

Corcoran. I should know if I read them, and I know that his instructions were not to commence an attack, but should he be molested he was to defend himself. His instructions were contained in a letter from Mr. Semple, addressed to Mr. Pambrun.

Mr. Sherwood. That you are sure of?

Attorney-General. I will just mention, as it may save time, that I have them in my hand, and shall prove them by Mr. Pambrun himself, whom I propose to make my next witness.

Mr. Sherwood. Then I have done with Corcoran.

PIERRE CHRISOLOGUE PAMBRUN, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Pambrun. I was, in 1816, in the service of the Hudson's Bay Company. I was engaged at Montreal by their agent, and went up to the Red River in their service. I was sent to Qui Appelle to get provisions from the Hudson's Bay post on that river, and take them to Fort Douglas. I received written instructions from Governor Semple for my conduct. My instructions were in writing.

Attorney-General. Did you, Sir, set off with any hostile intentions, or had you any intention of going to the North-West fort situated on Qui Appelle?

Mr. Pambrun. No, certainly not. I merely went for provisions, and had no hostile intention whatever against the North-West.

Attorney-General. Will you look at this letter, and say if it contains the instructions which you received?

Mr. Pambrun. It does; that is the letter I received containing my instructions from Governor Semple. (*The following letter was then put in and read.*)

Fort Douglas, 12th April, 1816.

Mr. Pambrun,

Sir,

Having received intelligence from various quarters, that the agents of the North-West Company intend attempting to interrupt our boats in their passage from Qui Appelle hither, you will proceed, as soon as possible, with the men whom Mr. Robertson will place under your orders, to Brandon House. When there, you will concert with Mr. Peter Fidler how far it may be advisable to proceed to Qui Appelle, or remain at Brandon. In either case, however, the power of deciding will rest entirely with yourself.

It is my wish that you avoid every act of hostility until fully justified by the conduct of our enemies. The half-breeds having been ordered to assemble at the French fort at Qui Appelle, any acts of hostility committed by them, must be considered as committed by immediate and authorised agents of the North-West Company, and repelled, or retaliated accordingly. I trust, however, that your moderation, and the cooler reflection of our opponents, will prevent any serious disturbance taking place. Should I, however, be unfortunately mistaken, you will remember that the quarrels in which you have before taken a part, may have been greatly more important, but could not be more just.

I am, Sir,

Your's sincerely,

(Signed)

ROBERT SEMPLE.

Attorney-General. I believe, Sir, you was an officer in the English service during the late war between the United States and England, and the allusion at the conclusion of Mr. Semple's letter, I presume, refers to that circumstance; does it not?

Mr. Pambrun. Yes, I was, and it is to that circumstance that Mr. Semple's letter refers.

Attorney-General. Did you see Mr. Semple after receiving those instructions, previous to your setting out for Brandon House?

Mr. Pambrun. No, I did not. I set out on receiving them for Brandon House immediately. I went first to Brandon House, and from there I went on to Qui Appelle, having consulted Mr. Fidler, agreeably to my instructions, and who considered it prudent for me to do so. On arriving at the Hudson's Bay post at Qui Appelle, I understood that a very large assemblage of half-breeds and Indians were gathered at Fort Qui Appelle, and that they were training to the use of arms every day, mounting guard and exercising. I was given to understand that their assembling in such numbers, was for the purpose of making an attack upon the Settlement at Red River, and to take Fort Douglas. After I had been a few days at the fort, I told Mr. James Sutherland that I thought it would be better to try and make some arrangement. Mr. Sutherland saw one of their people, and said that he hoped, should they chance to meet us, we should not be harassed or stopped by them. Mr. Sutherland was told, that unless he (Mr. S.) would promise that their people should not be molested below, no promise that we should not, would be made. Mr. Sutherland told them he would undertake, if they were peaceable, no interruption would be given, nor would they be meddled with, unless they interrupted our people. We left the fort of Qui Appelle, I think, on or about the 5th of May, with five boats [*canoes*], loaded with pemican and furs, and drifted down to the Grand Rapids. When near them, I put on shore in a boat. I had not come to shore many minutes, before about thirty men sprang out from behind a parcel of bushes, and called to me to surrender. I did not immediately, but after making resistance some time, finding I should be overpowered, I gave up, and the boats were sent on the other side of the river, after landing the pemican. We were taken to the North-West fort Qui Appelle. Cuthbert Grant, Thomas M'Kay, and Pangman Bostonois, were amongst the party who took us prisoners, and conducted us back to Qui Appelle. It was an armed party that took us, or we should not have given up. When I got to the Fort Qui Appelle, I saw Mr. Alexander Macdonell, who was in command

there ; he came to me shortly after my reaching the fort, and took me to his house, and I had supper. I saw a number of them, the people who had taken me a prisoner, at the table, and Mr. Alexander Macdonell was there also. I asked Mr. Macdonell, by whose authority I had been taken prisoner, and he told me that it was by his ; that he had sent the party which followed me, and had directed them to bring me back. I found at this fort a very great number of Bois-brulés, who had come from different posts, some of them from a very great distance, as far as Cumberland House. Mr. Macdonell said, I had been taken in retaliation for Mr. Robertson having taken Fort Gibraltar. The object of this large assemblage of persons from distant posts, was talked of freely and openly, that it was to go down and root out the Settlement at Red River, and take Fort Douglas ; the object was not hid. It was the common conversation at the fort, that they were going down. I heard that Mr. Macdonell said the affair of last year was a trifle, or as nothing, to what this year should be ; that the half-breeds and North-West were now all as one, and if any resistance was made to the half-breeds that they would rinse (drench) the lands with our blood. I heard them frequently talk together of going down to destroy the Settlement, and Cuthbert Grant amongst others. At the time Mr. Macdonell told me that the North-West people were sent to stop me, in retaliation for Mr. Robertson taking Fort Gibraltar, he said he would starve the Hudson's Bay servants and colonists, and make them surrender. After being kept there prisoner for some time, we all left Qui Appelle together. I ought to have mentioned, that the people who were taken with me had been sent away, a promise being obtained from them that they would not serve against the colony (North-West, I mean). After setting off, we drifted down to the place where I had been made prisoner and robbed ; and the provisions, &c. which had been landed, were taken into the boats, and we proceeded to the Forks of Qui Appelle, where we encamped. We were met at this place by Alexander Macdonell, who had two boats.

At the Forks we met a parcel of Indians and half-breeds, and Mr. Macdonell made a speech to them, explaining that the party were going down to attack the English, (the name by which the North-West people always call the Hudson's Bay people) and drive them away, or if they made resistance, (*drench*) rinse the land with their blood. He said to them, "My friends, I address you shamefully, " (with shame,) for I am in distress that I have not a pipe " of tobacco to give you, but all our merchandize and " provisions have been taken by the English, who are our " enemies and yours, as they have taken your lands;—the " purpose of my speech to you is to tell you, I and " my young men are going down to chastise these people, " who have robbed us, and who are deceiving you; they " tell you they will cultivate your land, but they are " driving the buffalo from it, and then you will be miserable. We are now going down to drive them away, " and shall be glad if you, (speaking to the Chief,) and " some of your young men would join us, but if you do " not come with us, we shall go nevertheless, and if " they make any resistance, we will *drench* [*rinse*] your " land with their blood." That was the purport of his speech; I cannot say for the exact words, but that was what it meant. It was repeated in Saulteux Indian by Pangman and Primeau, who interpreted what Mr. Macdonell (who spoke French) said. The Chief said he should not go himself; as for his young men, they might do as they chose, but they did not any of them go, as I believe. We remained about twenty-four hours there, and then went on towards the Grand Rapids of Ossiniboine River, the half-breeds generally by land. When we arrived there, a party was sent to Brandon House, and among them Cuthbert Grant and Mr. Macdonell went. I was left at the Grand Rapids at that time, but remained a prisoner. In the evening, about seven or eight o'clock, a horse was brought by Alexander Fraser and Taupier, and I was told I was to go to the post at Brandon House. I accordingly went. When I arrived at their fort, or got near to it, I saw a great mob of people about the gate with arms. My

horse was frightened, and would not pass through the crowd, so I was obliged to dismount. As I was going into the gate on foot, several of the persons presented their guns at my head, and I was apprehensive were going to shoot me. When I saw Mr. Macdonell, which I did presently after, I complained to him of this treatment, and of the insulting language which they made use of to me, but I got no redress, though he said that he would speak to them about it. I saw there a quantity of furs, which I knew came from Brandon House, because I had seen them there a few days before, and I saw a great quantity of other things that I knew came from Brandon House; and shortly after, I saw two of Mr. Fidler's men prisoners, and I then learnt that Brandon House had been pillaged by the party that had left us, as I before stated. The half-breeds were here divided into different parties, and leaders appointed to them. Cuthbert Grant, Antoine Hoole, Lacerte, Alexander Fraser, and Seraphim Lamaŕre, were appointed to act under Alexander Macdonell, who had command of the whole. This being done, they set off for Portage des Prairies, part of them going by water and part by land. At Portage des Prairies, our property, (that is, the pemican,) as well as theirs, was formed into a sort of battery, and two brass swivel pieces of cannon, which had been stolen from the Settlement the year before, were mounted. We encamped at Portage des Prairies, and remained there two days. On the 18th June in the morning, the half-breeds, or a great part of them, at least about sixty to seventy, with a few Canadians, armed with guns, pistols, spears, and lances, set out, under the command of Cuthbert Grant, to go to the Settlement at Red River. About thirty staid with Alexander Macdonell, and among them I remained. Their blacksmith was employed in making spears, and I was told they were to be used against the English, whom they were going to drive out of the river. On the 20th, we heard of the party that had started. A messenger arrived from Cuthbert Grant in the evening, one André Trottier [*Alexander Triquet*]; it was not the messenger that was expected. Upon seeing him approach, Mr.

Alexander Macdonell, Allan Macdonell, Siveright, Lamarre, and others, went forward, and seeing it was a messenger from Grant, they gave three huzzas, with their hats. When he came nigh the camp, they inquired "*quelle nouvelle*," and upon being told that Mr. Semple and twenty or more others had been killed, they huzzaed and shouted for joy, most particularly Siveright, Lamarre, and Allan Macdonell; them I distinguished particularly. Mr. Alexander Macdonell went to give the news to the other people, and I heard him say, "*Sacré nom de Dieu! bonnes nouvelles, 'vingt-deux Anglois de tués.*" Bostonois Pangman inquired whether there were any killed on the side of the half-breeds, and being told that there had been one, and who it was, he said that it was his cousin, and that he would be revenged on all the English; that the affair should not end here. Siveright was present; Bostonois spoke French; what he said amounted to this: "the affair shall not end here, as my cousin is killed, so they shall all be killed; none of those dogs shall leave the river, for if they are allowed to go away, they will always be coming back, as they did last year, and therefore not one of them should leave the river, as there would always be disturbance and mischief, so long as they were allowed to live." Bonhomme Montour, and Latour, were immediately sent off to Red River, to desire Grant not to let the settlers go away till Mr. Macdonell should arrive at Fort Douglas with his party. Some time after we continued our route towards Fort Douglas by land, to within about thirty miles, when I was put into a boat and went the remainder of the distance by water. I found Fort Douglas in possession of the half-breeds; of Cuthbert Grant and others of the party who had started on the 18th from Portage des Prairies.

Attorney-General. Were any of the prisoners at Fort Douglas?

Mr. Pambrun. Only Mr. Siveright; the others came a day or so afterwards with Mr. Norman M'Leod, and then a council was held with the half-breeds. I saw Mr. Alexander M'Kenzie, Mr. Hugh M'Gillis, Mr. John

M'Laughlin, and Mr. M'Donald; I also saw Mr. Siveright there.

Attorney-General. He was the one who huzzaed at Portage des Prairies, was he not, when the news was first brought of this melancholy affair?

Mr. Pambrun. Yes, it was he, and Lamarre, and Allan Macdonell, but Siveright did not attend the council.

Attorney-General. You have not said any thing about Mr. Simon Fraser, was he there or not?

Mr. Pambrun. I do not recollect whether he was or not, but all the others I am sure were; Mr. Fraser I do not recollect.

Attorney-General. Did you see Mr. M'Leod at Fort Douglas in his capacity of a magistrate?

Mr. Pambrun. I was taken before Mr. M'Leod when he was in the room formerly occupied by the late Governor Semple, but I do not know for what, as he did not appear to wish for any information, but what he got from the half-breeds or others of his own party.

Attorney-General. Did these gentlemen know of the affair of the 19th June, and that the persons you found in possession of the fort upon your arrival there, had been engaged in it?

Mr. Pambrun. Yes, they must have known it, because it was the general topic of conversation; nothing else was talked of.

Attorney-General. Did they appear displeased with the half-breeds and others who had been engaged in that affair?

Mr. Pambrun. No, not at all, quite the contrary; they appeared pleased, and rewarded them; they dined constantly at the same table, and were always together. A council was held after Mr. M'Leod arrived, and some few bales of clothing were brought out, and given to them. The half-breeds gathered together, and Mr. M'Leod made a speech to them, thanking them for what they had done, and gave them presents of clothing; and as there were more persons than there were suits, those who did not get

them at that time, were promised they should have them when the autumn canoes arrived.

Attorney-General. Was you at the council?

Mr. Pambrun. No, I was not; they would not let me, and it was not my business to attend a council of murderers, but that was what all who did attend it, said was the nature of Mr. M'Leod's speech to those that had helped to murder Governor Semple, viz. that he did not expect to have met so many with Mr. Macdonell, that they were his kinsmen, and had helped them in their time of need, and he had therefore brought clothing for them; but as there was not enough for all, those who wanted them must take what were there, and the others should have some equally good when the fall canoes came up. I saw a capote and feathers that one came away with, and he told me it was for the 19th.

Attorney-General. Did you hear any particular conversation between the gentlemen and any of the half-breeds engaged on the 19th, shewing their approbation of the conduct pursued by them on that day?

Mr. Pambrun. No, I do not know of any particular conversation on their part, approving of the half breeds' conduct; all I know is, that they dined together every day, and were always together, and I suppose did not disapprove of it, or they would not.

Attorney-General. Did you go to the battle-ground yourself?

Mr. Pambrun. Yes, I asked Mr. Macdonell to let me go and see it, and he allowed me to go; a most dreadful scene I witnessed. There were the mangled limbs of the sufferers on the 19th June exposed to the wolves and dogs to be torn and devoured; there were arms, and legs, and heads, and bowels, of the murdered victims, scattered over the ground. The Indians of the neighbourhood would have buried them, but were afraid of the half-breeds and North-West people. All who escaped, I believe, were Pritchard, Bourke, Corcoran, and Heden.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Pambrun. I received Mr. Semple's letter of instructions on the day it bears date, and I set off as soon as I got it. I was ready before, and was only waiting for my instructions, which Mr. Semple gave me in writing. Those instructions you have seen in the letter which contained them. Written instructions were frequently given. I suppose Mr. Semple imagined I might be stopped, because our people had been stopped before, and also because we knew there was a very large party of half-breeds at the North-West Qui Appelle fort.

Mr. Sherwood. Do you know, Sir, if part of Mr. Semple's apprehension arose from an idea, as he had taken Fort Gibraltar, that something might be taken from him, or as Mr. Miles Macdonell had taken pemican, perhaps pemican might be taken by others in return for it?

Mr. Pambrun. I do not know that Mr. Semple took Fort Gibraltar, nor that Miles Macdonell took pemican.

Mr. Sherwood. Do you know, Sir, that in March, not long before you started on this unfortunate journey to Qui Appelle, Mr. Colin Robertson, who sometimes, I believe, was called Mr. Kofy, took Fort Gibraltar?

Mr. Pambrun. No, I do not; I was not there in March.

Mr. Sherwood. Well, Sir, in the month of April; do you know that it had been taken by people from Fort Douglas under the directions of this Mr. Robertson?

Mr. Pambrun. In April I knew that it had been taken, but not being there at the time of its being captured, I cannot say by whom.

Mr. Sherwood. When, as a soldier, you go to reinforce a place, you generally try to avoid a superior force, do you not, to avoid being surprised, or coming to battle, till you have effected a junction with the body you are sent to reinforce?

Mr. Pambrun. Of course, when you go to reinforce a place or troops, you try to join them without fighting.

Mr. Sherwood. If you meet a superior force unexpectedly, are you not obliged to yield?

Mr. Pambrun. Yes, if too strong to contend with.

Mr. Sherwood. And this time you met rather unexpectedly a superior force, and they took you prisoners, was not that it?

Mr. Pambrun. I do not know about meeting a superior force, and being made prisoner. I was met by a party of ruffians, too strong to contend with, and they robbed me of all my property, and made me a prisoner.

Mr. Sherwood. Bostonois Pangman, was he of this party whom you call ruffians? rather a hard name, Mr. Pambrun.

Mr. Pambrun. Yes, he was one of the ruffians, for I cannot call them any else, who robbed me, and treated me as they did. I don't know what else to call them.

Mr. Sherwood. Be cool—don't get angry—I have a great many questions to put to you. Do you know that Bostonois Pangman had, in March before, been made a prisoner and robbed? did you ever hear of that circumstance, or any about Fort Pambina?

Mr. Pambrun. I did hear that Pangman was made a prisoner, but I do not know of his being robbed.

Mr. Sherwood. Well, then, having been taken prisoner himself by your people, the tide had turned, and he made you a prisoner. Aye! well; turn and turn about's fair play. Now, Sir, I want to know a little more about this extraordinary speech of Mr. Macdonell's, in which he talked of rinsing the land with blood. Did you understand, Sir, what he meant by rinsing? but first tell us what it was that Mr. Macdonell did say, because it is very important to a right understanding of you?

Mr. Pambrun. I have said it often enough before.

Mr. Sherwood. Oh no, you have not, you must say it again, and perhaps again after that, for I do not at all comprehend this rinsing or washing the land with blood. So let us have it again.

Mr. Pambrun. He said that they were going down to drive away the English again, and although the Indians would not go, that they would.

Mr. Sherwood. Go on, Sir, you are just coming to that part which I am desirous to hear again, about rinsing.

Mr. Pambrun. He said, if resistance was made he would drench; if I said rinse, I did not mean it; he said he would drench the lands with the blood of the English, with the blood of the settlers.

Mr. Sherwood. And you are positive that you heard Mr. Alexander Macdonell make that speech?

Mr. Pambrun. I am confident, or do you think I would say it on my oath?

Mr. Sherwood. You have since that time, I believe, made an affidavit of the same circumstances, and detailing the speech; before whom did you make it, supposing you to have made one?

Mr. Pambrun. I did make an affidavit of those and other circumstances, before my Lord Selkirk.

Mr. Sherwood. Did you draw up the affidavit yourself, or if you did not, tell us who did, will you?

Mr. Pambrun. I did not write it myself. I do not understand English very well, and did not then so well as do now; but I told Mr. Miles Macdonell what I had to swear to, and he wrote it down for me to make oath to.

Mr. Sherwood. Pray, Sir, where was your deposition taken?

Mr. Pambrun. It was taken at Fort William.

Mr. Sherwood. At Fort William, was it? how came that? was his Lordship on a visit to the partners of the North-West Company; was he a guest at Fort William?

Mr. Pambrun. No, he was not a guest to the North-West Company; he would not be a guest of theirs, you may be sure; he would scorn it.

Mr. Sherwood. The affidavit that you made before Lord Selkirk, was it printed at your request, or by your approbation?

Mr. Pambrun. No, it was not at my request, nor indeed with my approbation being asked.

Mr. Sherwood. Do you know that it was printed?

Mr. Pambrun. Yes, I do, I have seen it in print.

Mr. Sherwood. Who was with you when you made oath to your deposition?

Mr. Pambrun. The Earl of Selkirk and the gentleman who drew it up for me. It was sworn to before the Earl of Selkirk, as a Magistrate, at Fort William.

Mr. Sherwood. Pray, Sir, how did Lord Selkirk happen to be at Fort William, taking depositions as a Magistrate, in the house of the North-West Company?

Mr. Pambrun. Lord Selkirk came to Fort William to look after the murderers of the 19th June, in his capacity of a Magistrate, and being resisted, he took possession of the fort, and I believe it was in that manner he happened to be at Fort William.

Mr. Sherwood. Was you at Fort William at the time?

Mr. Pambrun. Yes, I was. I had been brought down from Fort Douglas before Lord Selkirk arrived.

Mr. Sherwood. And what was done with the gentlemen belonging to the North-West Company who were at Fort William?

Mr. Pambrun. They were sent to Canada, I believe, to take their trials. I know they went away.

Mr. Sherwood. Were you very glad that they were sent away?

Mr. Pambrun. I do not know that I was glad.

Mr. Sherwood. Well then, were you sorry that they were sent away?

Mr. Pambrun. No, I cannot say that I was sorry.

Mr. Sherwood. But you must have been glad or sorry; one or the other you must have been, and I only want to know which?

Mr. Pambrun. I tell you I don't know that I was glad, nor do I know that I was sorry: do you know better than me what I was?

Mr. Sherwood. You are not to catechize me. It is not you who are to examine me; it is I who am to examine you, and I ask you again, was you glad or sorry that the North-West gentlemen were turned out of their houses, and their property taken from them, by your master, Lord Selkirk? now, Sir, instead of asking me a question, answer mine?

Mr. Pambrun. I do not know that I was glad or sorry

of what you say, because I do not know that it took place. I could not but be glad that murderers were brought to justice, and such I considered them.

Mr. Sherwood. That is your opinion, is it? I dare say you considered Paul Brown and Boucher murderers, as your master did, but a Jury of impartial persons have thought differently. Do you know of any right that Lord Selkirk had to take Fort William?

Mr. Pambrun. I believe that if he had not taken it, that he and all with him would have been massacred by the North-West people, and that I should think reason enough. When Lord Selkirk first came, he did not take the fort; it was not till he had information that they intended to attack him and his party, that in self-preservation he took it.

Mr. Sherwood. How do you presume, Sir, to suppose that the North-West Company would have massacred Lord Selkirk and his party, even if they had attempted to get possession of their houses and property?

Mr. Pambrun. I do believe they intended it, for they gave their words of honour to Lord Selkirk, that they would not attempt any thing against him, nor move any thing. When, after giving that promise, I know that gunpowder was taken away and hid in a swamp behind the house, and that arms were concealed, I cannot doubt but that they did intend to massacre the whole party.

Mr. Sherwood. You were in the habit of dining with these Gentlemen, Sir, when you were at Fort William?

Mr. Pambrun. I was accustomed to dine at their table.

Mr. Sherwood. Did you dine with them willingly?

Mr. Pambrun. I dined with them willingly enough, for there was no where else for me to dine.

Mr. Sherwood. You were then all of one party, and there was no difference between you at that time?

Mr. Pambrun. There was a great difference, I think, for they were murderers, and I was not a murderer.

Mr. Sherwood. How dare you presume to say those gentlemen are murderers?

Mr. Pambrun. I do not say that they are exactly

murderers, but I do presume to say that they are accessaries to murder, and a great many more than them.

Mr. Sherwood. Then, Sir, how came you to dine and associate with them, if that was your opinion?

Mr. Pambrun. I did it through necessity; there was no other place for me to have my victuals in but at their table. I did not do it from choice, believe me.

LOUIS NOLIN, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Nolin. I was at Fort Douglas in 1816. I know that it was expected the Settlement was to be attacked; we had received information several times of it from friendly Indians and others. A day or two before the 19th June, two Indians came to the fort, and I interpreted for Governor Semple what they said. They told us that they had made off from a large party of half-breeds and others, who had come down from Qui Appelle, and were then at Portage des Prairies, on their way to attack us, and that we should certainly be attacked in the course of a day or two. The report, that we were to be attacked, had prevailed a long time. Though the report was very prevalent, Mr. Semple did not give attention to it; indeed he constantly said he could not think that they would hurt the Settlement, and he thought we were safe in the fort; a watch was constantly kept, however, at the fort, so that we might have notice when they came. I was there on the 19th June, and towards evening, an alarm was given that an armed party on horseback were coming down and passing the fort. I was not present when they were first perceived; I was at the river, fishing, and did not see them then; as soon as I heard they were come I went up to the fort. Mr. Semple had gone out before I got there; I went into the fort and found a number of our people in it. I should suppose from fifteen to twenty men were there, and from twenty to twenty-eight must have gone with Mr. Semple. When I heard that Mr. Semple had gone, being afraid something might happen, I sent an Indian to see what

took place; before doing so, however, I had myself looked from a bastion, and saw that our people were in line. The man soon returned, and told me that the Governor was surrounded by the mounted party. I did not see them surround him. I did not see any thing after what I mentioned of their being in line. When the Indian told me this, I sent him back again, to see what was done, and shortly after he came and told me that Mr. Semple and several of the English gentlemen were killed, as well as a number of the men, and that the other side had lost only one. I know Cuthbert Grant very well. I saw him for the first time after the battle on the next day at the fort; he came there with a number of persons. I did not see Morain with them. On the 20th I went to the Plains, and I saw Grant. The bodies of those who had been killed on the 19th were not buried, and I asked permission of Grant to send and bury them. He said I might either send for them away, or bury them there.

Attorney-General. How long did the people remain at Fort Douglas?

Mr. Nolin. I asked only four days, but Grant said only two could be allowed. Understanding that an arrangement had been made with Mr. Pritchard on account of our people generally, I did not say much to him about it. I think it was on the 21st, or perhaps on the 22d, that all the people went away.

Attorney-General. Why did they go away from the Settlement?

Mr. Nolin. It was all that Cuthbert Grant and his party would agree to. It was the only way they had to save their lives.

Attorney-General. Had any of the North-West partners arrived at Fort Douglas before you went away?

Mr. Nolin. Yes, Mr. Alexander M'Kenzie had arrived.

Attorney-General. Had you any conversation with him upon what had occurred on the 19th?

Mr. Nolin. No, I had not any, that I recollect. I did not see Mr. M'Kenzie go to the ground where Mr. Semple

was killed, but I understood that he went; I was told that he did go. I did not see any presents given by Mr. M'Kenzie to the people who had been engaged in the affair of the 19th June. I was present about ten minutes after Mr. M'Kenzie arrived, and saw him with Cuthbert Grant and Alexander Fraser. They had a long conversation together, but it was in English, except a few words now and then in French; and as I do not understand English very well, I cannot say what they were talking about; but from the little I did understand, I have no doubt of its being about the affair of the 19th June*.

Attorney-General. Did you see the whole of the prisoners at the Forks, or which of them did you see?

Mr. Nolin. I do not recollect that I saw Dr. M'Laughlin, but I think I did see all the others.

Attorney-General. How did they appear; contented with what had happened, or did they express regret, and appear sorry for this melancholy occurrence?

Mr. Nolin. No, I cannot say they appeared sorry for it. They appeared to me to be pleased with it. "*Ils m'ont paru bien contents.*"

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood. Do you know who fired first on the 19th June?

Mr. Nolin. No, I do not, I was not present.

Mr. Sherwood. Did you, Sir, at the time hear who fired first, or was you not on the next day told who fired

*This conversation of M'Kenzie with Grant and Fraser, was not the only one to which Nolin could have given testimony. In an affidavit, of which a copy was in the hands of the Attorney-General, Nolin had stated that "M'Kenzie spoke to the half-breeds, who told him about the affair of the 19th of June, at which he laughed, that the deponent heard him, (M'Kenzie) ask the half-breeds, which of them had fired, and that he appeared to approve those who had, and to disapprove of the others."

It is singular that the Attorney-General should have omitted to pursue the examination into this point; but Nolin being examined in French, his evidence was altogether very imperfectly brought out, in consequence of the incapacity of the Interpreter.

first? was you not on the next day told that the Hudson's Bay people fired first, or that Lord Selkirk's people fired first?

Mr. Nolin. Next day I did heard that Lord Selkirk's people fired first. Lord Selkirk's people and the Hudson's Bay I consider the same.

Re-examined by the ATTORNEY-GENERAL.

Attorney-General. Who was it that told you that the Hudson's Bay or Lord Selkirk's people fired first; was it the North-West people?

Mr. Nolin. The North-West people told me so; they said Mr. Semple's party fired first.

Attorney-General. Did you always hear that account?

Mr. Nolin. No, I also heard they fired both together. The accounts given were different, very different, but that is what I heard in various ways, though I cannot say any thing about it, as I was not there.

FREDERICK DAMIEN HUERTER, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Huerter. In the spring of 1816, I was in the service of the North-West Company, having been engaged at Montreal. I left Montreal in company of Mr. Alex. M'Kenzie, and a number of partners of the North-West Company. Mr. M'Leod joined the party at Coteau du Lac, and proceeded with us up the country to Red River. The first intelligence we received of the destruction of the colony, and Governor Semple's death, we got from the settlers who had left Fort Douglas. We met them in Red River; I think it was on the 24th June. Mr. M'Leod was with us at that time; he joined us at Coteau du Lac, and he had continued on with us from there. The general report we got from the settlers was, that Governor Semple, with from twenty to twenty-two persons, had been killed between Fort Douglas and Frog Plains. The accounts of different persons did not agree in every particular, but that was the most general account given by the people.

Attorney-General. Who was with you in your brigade of canoes, I mean of the prisoners?

Mr. Huerter. I do not know but that all were there but Siveright. Mr. M'Kenzie, M'Gillis, Fraser, M'Laughlin, and Macdonald were there. It was Mr. M'Leod who commanded our brigade; he was considered as the head. Upon meeting with the settlers they were all ordered to go on shore, which they did. I saw Pritchard and Heden among the persons whom we met. I saw them both on shore there. Mr. Pritchard told Mr. M'Leod that Mr. Semple was killed, together with several officers of the colony, and in all twenty-two or twenty-three persons, as I understood him at the time.

Attorney-General. At the time Mr. Pritchard made this communication to Mr. M'Leod, did you see Mr. M'Kenzie, or any of the other gentlemen now at the bar, present with him?

Mr. Huerter. I cannot say that I did at that time. We were afterwards sent down to Netley Creek, and detained there about two days, and then proceeded on to Fort Douglas.

Attorney-General. Were Lieutenants Misani and Brumby of the party who accompanied you from Montreal?

Mr. Huerter. They were both of them.

Attorney-General. Did you see any half-breeds at Netley Creek who had come from Fort Douglas?

Mr. Huerter. No, I did not see any till I arrived at Fort Douglas.

Attorney-General. Not at Bas de la Rivière?

Mr. Huerter. No, I did not see any till I got to Fort Douglas. I saw Cuthbert Grant, Alexander Fraser, and a great number of others at Fort Douglas on my arrival. The fort appeared to be in possession of the North-West Company, at least it was their servants who had it in possession. A dram was given by Mr. M'Leod to all the people upon his arrival; it was given to them in Mr. Semple's room.

Attorney-General. Did you ever hear any account from the parties engaged in the affair of the 19th June, of the death of Mr. Semple?

Mr. Huerter. I heard from these persons a number of different reports of that circumstance. I did not hear the partners give any account of the matter. I know that a council with the half-breeds was held the day after our arrival at Fort Douglas, for I was present at it. Mr. Archibald Norman M'Leod was at the head of the council, and he made a speech to the half-breeds. He thanked them for their assistance, and said he had brought them some *habillements*, and was sorry that he had not brought them more, but that he had not expected to have found so many of them at the Red River, and that those who most wanted them must take these, and that the others should have an equal proportion in the autumn. Mr. Alexander M'Kenzie was there. The half-breeds inquired of him if Lord Selkirk had any right to establish settlers at Red River, and he told them no; that he had no right, for that the land all belonged to them, and that they had done well to defend their own lands. Cuthbert Grant, Bostonois Pangman, and Seraphim Lamarre made the division of the clothes among the half-breeds.

Attorney-General. How many half-breeds do you suppose you found at Fort Douglas upon your arrival there?

Mr. Huerter. I cannot say that they were all half-breeds, but I should think there were about sixty persons there altogether, and the greater part were half-breeds. I saw Cuthbert Grant there, and he told us in what manner the people and Governor Semple were killed. I do not recollect that he ever said that he had killed Governor Semple himself. I never could learn positively who began the fire. Grant shewed how the parties were placed, but always said he could not tell who began the fire, but that he believed it was very near together.

Attorney-General. Did you ever hear from Cuthbert Grant what was the object of this party coming to Red River? Did you ever hear that it was to carry provisions to meet your party from Montreal?

Mr. Huerter. No, I never did hear any thing of that kind.

Attorney-General. Were your party in want of provi-

sions, so that you expected to meet them at that time or place?

Mr. Huerter. No, I cannot say that I think we were in want of provisions, and I never heard that they were expected to be met there. At Bas de la Rivière I was directed by Mr. M'Leod to prepare a number of cannon-cartridges for some field-pieces that were there. I was then told that the party were going to take Fort Douglas*. I had before frequently heard it spoken of, but never so unreservedly. On that occasion I stated that our party was too weak for such a purpose, and that I did not, from the description of Fort Douglas, think that it could be taken by so small a party. Mr. M'Leod told me that there was a party coming from Portage des Prairies, and that another party was to come from above, through the Lake Winipic, and the three were to unite, and then they would be strong enough. This was stated as the reason for our going and taking the cannon which I was to have charge of.

Attorney-General. I will now ask you, Sir, did you make, or cause to be made, cartridges for the ordnance, and who furnished you with the materials for preparing them?

Mr. Huerter. I did make them. The gunpowder and ball were obtained from the stores, and the flannel used was given me by Mr. M'Leod, who had brought it with him.

Attorney-General. I will repeat a question I have before put to you; did you hear any thing of a party being expected to meet you with provisions from Qui Appelle,

* The evidence is here imperfectly reported by the short-hand writer. The witness stated, that these orders were given by Alexander M'Kenzie (the prisoner) as well as by M'Leod; and that it was M'Kenzie also who told him of the intention of taking Fort Douglas, and of different parties of the North-West Company who were to meet for the purpose of attacking it, particularly specifying, that under the direction of Alexander Macdonell, a strong party of half-breeds was to come down from Qui Appelle River, and to make the first attack upon the Settlement.

or Portage des Prairies; or was your want of provisions such as to render it necessary that you should receive a supply? were you short of provisions?

Mr. Huerter. I never heard that any were expected. I always heard that the party from Portage des Prairies were expected to join us, and help in the attack that was to be made on Fort Douglas.

Attorney-General. Except the giving out of dresses, do you know of any act, on the part of any of these Gentlemen, that appeared like giving approbation to the half-breeds who had been engaged in the affair of the 19th June?

Mr. Huerter. I cannot say that I do. Mr. M'Leod made the speech, saying he had not expected so many, but that the suits that were there must be taken by those who had most occasion for clothes, and that the others who did not obtain them at that time should have them in the autumn. It was Grant, Bostonois Pangman, and Lamarre, who divided them among the half-breeds after Mr. M'Leod's speech*.

* Huerter had been sworn to an affidavit, stating a number of particulars of material consequence, which the questions put to this witness in court were not calculated to bring out. Among other circumstances, he stated, that on his arrival at Fort Douglas, M'Leod, in presence of Alexander M'Kenzie, John M'Laughlin, and the rest of his party, had bestowed particular marks of approbation on the half-breeds, who had been engaged on the 19th of June, and who being assembled in a large outer room, such of them as had not dined with the partners, were called into Governor Semple's apartment, where M'Leod, in presence of M'Kenzie and the others, gave each of them a dram, shook them by the hand, and expressed his thanks for what they had done, and for their attachment to the North-West Company.

He also stated that M'Leod went in company with M'Kenzie and the other partners to meet two Indian Chiefs, to whom he made a speech through an interpreter, reproaching them for having refused to take up arms against the colony, when called upon to do so, and threatening vengeance if they should ever again befriend the English. Huerter also stated in this affidavit, that he had rode to the field where Semple had been killed, in company with M'Leod and many of the half-breeds and others of the North-West Company, particularly the prisoners M'Kenzie, M'Donald, and M'Laughlin; that at this time some of the bodies were scattered about the plain in a mangled state, but that these individuals

Cross-examined by Mr. SHERWOOD.

Mr. Sherwood. In whose service are you, Sir, at present; in that of the Earl of Selkirk, or of the Hudson's Bay Company?

Mr. Huerter. I am in neither the one or the other's employ.

Mr. Sherwood. Were you never in the employ of either?

Mr. Huerter. No, I never was.

Mr. Sherwood. Who brought you up here? you came from Montreal, I believe; do you come at your own expense?

Mr. Huerter. I did come from Montreal. I am under subpoena to appear here, and I came at my own expense.

Mr. Sherwood. Do you mean to swear that you bear your own expenses at the present moment?

Mr. Huerter. No, I do not. At the present moment they are borne for me. I have been detained for a long time as a witness, and must of course have subsistence found me.

expressed exultation at the sight, laughing, and striving to pass jests on the occasion; that the approbation of M'Leod, M'Kenzie, and M'Donald, was lavishly bestowed on such of the half-breeds and others, as pointed out to them the deeds of cruelty by which they claimed distinction. That on passing the grave of Duncan M'Naughton, one of the settlers who had been killed, John M'Donald (one of the prisoners) said to the witness, "There lies a great rascal, who well deserved the fate he met with:" that on passing the same grave in returning towards the fort, John M'Laughlin (another of the prisoners) pointed out the spot from which Michael Bourrassa had shot M'Naughton, while the latter was running away, and at a considerable distance, and asked the witness "whether he did not think that was an excellent shot."

In the same affidavit Huerter describes the partners of the North-West Company as making use of all the property at the fort of the Settlement, as if it had been their own lawful property, and particularly gives an account of M'Gillis, one of the prisoners, superintending the dismantling and demolition of a schooner, the property of Lord Selkirk.

As the Attorney-General was in possession of a copy of the affidavit containing these pointed and specific facts, his examination might certainly have been conducted in a manner better calculated to bring them out, than by the last vague question which he put to the witness.

Mr. Sherwood. When you were accompanying Mr. M'Leod to the Indian territory, you were in the service of the North-West Company, I believe. How long did you remain so?

Mr. Huerter. I was in their employ about a year.

Mr. Sherwood. How long was your engagement for?

Mr. Huerter. My engagement was for three years.

Mr. Sherwood. So you left them before your engagement was closed?

Mr. Huerter. I did, because I was wanted to do what I thought wrong.

Mr. Sherwood. I am not asking you why you left. Pray, did you not receive equipments? do not all the servants of the North-West Company receive clothing? was it extraordinary, on the arrival of the canoes with supplies, that the servants who wanted clothing should receive them?

Mr. Huerter. I did get equipments, but not such as them; they were understood to be presents, and not the regular equipments.

Mr. Sherwood. How came you to understand that?

Mr. Huerter. Shaw, a half-breed, in the service of the North-West Company, told me they were presents.

Mr. Sherwood. Was you in the Meuron regiment, and what countryman are you? was you ever in the French service, in the service of Buonaparte?

Mr. Huerter. I was in that regiment. I am a German, and was formerly in the French service.

Mr. Sherwood. A number of your former comrades of that regiment enlisted into the service of the Earl of Selkirk, did they not? but you say you was not among the number?

Mr. Huerter. Some of my former comrades did enter into the service of Lord Selkirk, and were to become settlers, but I did not enter his service.

Mr. Sherwood. Did you never receive money for your subsistence from a certain person on account of Lord Selkirk?

Mr. Huerter. I certainly have received money for my

subsistence. It is not to be supposed but I must have a living found me by somebody, as I have been upwards of two years under detention as a witness.

Mr. Sherwood. Did you not make a long journey with Lord Selkirk from Red River through the Mississippi, round by Washington, and through the United States, to Canada?

Mr. Huerter. Yes, I did accompany his Lordship.

Mr. Sherwood. In what capacity did you travel with him; was you his valet, or what?

Mr. Huerter. I did not travel as his servant.

Mr. Sherwood. In what capacity did you travel with his Lordship; was you his companion, if not his servant?

Mr. Huerter. I was not Lord Selkirk's servant. I travelled with him as a companion; that is, I was in his company; I certainly was not his servant. I went in his company.

Mr. Sherwood. What rank had you in the army, Sir? I do not mean under Buonaparte, but among the De Meurons?

(*Mr. Huerter not immediately answering the question*), was not you a serjeant only?

Mr. Huerter. I was a serjeant.

Mr. Sherwood. So then, the travelling companion of the great Lord Selkirk turns out to be a recruiting serjeant of the mercenary De Meuron regiment, which was formerly in the service of Buonaparte: he was a servant to the North-West Company, and deserted from them to become his Lordship's travelling companion—

Attorney-General. I really, my Lords, consider such remarks highly illiberal and unjustifiable. The witness does not represent himself as the companion of Lord Selkirk, but that he was in his company, or rather accompanied him. It being insinuated that he was a servant, he said he did not travel with Lord Selkirk in the capacity of a servant, but that he accompanied him; with reference to his military services, he was clerk to the regiment, and is a very decent

respectable man. Was not you clerk to the Meuron regiment?

Mr. Huerter. I was clerk to the regiment.

Attorney-General. You do not mean you was the particular companion of Lord Selkirk, but you travelled in his company, and not in the capacity of a servant?

Mr. Huerter. That is what I mean.

Attorney-General. That is the case on the part of the Crown*.

* The Attorney-General could have produced a very important letter signed by one of the prisoners (M^cLaughlin) along with M^cLeod and another of his partners, strongly confirming the other evidence of the hostile intentions with which they went to Red River. The letter is as follows :

FORT WILLIAM, 3rd June, 1816.

GENTLEMEN,

" Our intelligence from the Red River is very limited ; but what we
 " have heard gives us much uneasiness ; and, after various consultations,
 " we have come to the resolution of forwarding an express to you, to
 " request you will, as soon as possible, assemble as many of the Indians as
 " you can, by any means, induce to go to the Red River to meet us there.
 " We would suggest and require, that Messrs. Morrison and Roussin
 " should head and accompany the Indians. Roe we expect to see at Lac
 " la Pluie, and we shall not fail to send him also to assist Mr. Morrison
 " and Mr. Roussin. We also mean to take a few of the Lac la Pluie
 " Indians along with us. We shall, and will, be guarded and prudent ;
 " we shall commit no extravagances, but we must not suffer ourselves to
 " be imposed upon ; nor can we submit quietly to the wrongs heaped upon
 " us by a lawless, unauthorised, and inveterate opponent in trade.

" You will not hesitate to explain to the Indians the purpose for which
 " we want them to meet us ; possibly and most probably, their appearance
 " may suffice ; but in any case they shall be well and fully recompensed
 " for their trouble. You who know the Indian character so well, make
 " use of that experience to collect as many as you can in a short time, from
 " fifteen to twenty, upwards, to one hundred.

" You will explain to the chief, that we have king's officers and a few
 " soldiers along with us, so that there is not the least doubt of the justice
 " of our cause. We start from hence to-morrow in five light canoes ;
 " upwards of fifty men in all ; and I think we shall be in Red River about
 " the 17th of June, where we shall have to meet, if not all that we expect,
 " at least Mr. Morrison and Mr. Roussin, with a few Indians, as an *avant*
 " *garde*.

" Mr. Grant will take the whole weight and trouble of the affairs of the
 " department on himself, no doubt, and give Messrs. Morrison and Roussin
 " all the assistance the department can afford.

It being ten o'clock, P. M. the Court adjourned till nine o'clock, A. M. to-morrow.

SATURDAY, the 31st of OCTOBER, 1818.

PRESENT

His Lordship Chief-Justice POWELL,
The Honourable Mr. Justice BOULTON.

The Court being opened in the usual form, and the Jury called over, the trial which commenced yesterday was resumed.

Mr. Sherwood proposed entering into the question of jurisdiction, which being a matter of fact, could not be argued in abatement, but must be tried by a jury. He proposed to shew, that the place where the offence with which the prisoners were charged, was alleged to be committed, was not within the Indian territories, and therefore, not cognisable by the Court under the provision of the Canada Jurisdiction Act. But the Chief-Justice intimating that it was not a proper time to discuss the question of

" Since writing the foregoing, Mr. Farries has determined to go to assist you, and proceed as quickly as possible to Red River. I am convinced you will be most happy to have his co-operation and aid, which you will find most useful. Some articles that you may stand most in need of, are also sent.

" The letters written yesterday, if Mr. Farries overtakes the canoe, he will take. Positively no courier, or letters from the Hudson's Bay Company must be allowed to pass; they must all be sent to this place. A great deal depends on your exertions, gentlemen; and we have great confidence in the known influence of Messrs. Morrison and Roussin over the natives.

" With much esteem,

" We remain, gentlemen,

" Your most obedient servants,

(Signed)

" A. N. M'LEOD,

" *Agent N. W. Co.*

" R. HENRY,

" JOHN M'LAUGHLIN."

" *Messrs. Grant, Morrison,
and Roussin.*"

jurisdiction, and that it would be matter of serious consideration for the prisoners' counsel, whether it might be proper to move it all. Mr. Sherwood proceeded with the Defence.

DEFENCE.

JAMES TOOMEY, *sworn.*

Examined by Mr. SHERWOOD.

Toomey. I was in the Hudson's Bay Company service in 1814, under the command of Mr. Miles Macdonell. I know of a Proclamation being issued by Mr. Macdonell. I did not read it myself, but I heard Mr. Vicker read it, and explain the tenor of it. It was to prevent pemican going out of the country about the Red River.

Mr. Sherwood. Were the people generally satisfied with it, the half-breeds and the hunters?

Toomey. No, they were very much dissatisfied with it indeed.

Mr. Sherwood. What did the Proclamation say was to be done, if the provisions were attempted to be taken out as usual?

Toomey. That it was to be seized and taken to Fort Douglas. I know of two train-loads being seized by our people from some of the North-West Company's servants in the spring of the year 1814, for I was one of the party.

Mr. Justice Boulton. You are not obliged to answer any questions that may lead you into difficulty. If any such are put, you may refuse answering them; and if they would, by being answered, bring you into trouble, the Court will protect you.

Mr. Sherwood. Do you know where these people obtained the dried meat called pemican, which your party seized?

Toomey. I was told by a person named M'Cauley, that they had bought it of the free men, not the people of the Settlement at Red River, but of the free men, or the people that hunt.

Mr. Sherwood. Do you know if, previous to 1814, the North-West Company had been accustomed to obtain pemican from these free men, as you term them?

Toomey. Yes, I know that they had been in the habit of trading with the Company.

Mr. Sherwood. But shortly after this Proclamation, you know that they were prevented, and their pemican was seized?

Toomey. Yes, it was. We were sent to seize it under the command of Mr. Warren from Fort Daer, where Mr. Miles Macdonell commanded, and we did seize it under his orders, and those of Michael Macdonell. Early in spring time, about the middle of March, we were sent for by Mr. Miles Macdonell, and told to be ready to go when the snow was off, a number of miles, on the Plains, to search for provisions amongst the free men, and that we were to be furnished with arms and ammunition. The next day we were supplied with them, and a party of fourteen or fifteen of us went with Mr. Warren; Mr. Miles Macdonell saying he would not be long in following us. Two or three nights after leaving Fort Daer, we slept in the tents of some free men, and met there with Mr. Michael Macdonell, a clerk of the Hudson's Bay Company, and also some of the servants of the North-West Company. The next morning we saw them load two or three trains with provisions; we were then ordered to load our muskets with ball, and fix our bayonets; having done so, we were put into rank by Michael Macdonell, and being armed, we stopped it from being taken by the North-West Company's servants. We were all armed. When they were going to take it away, we were drawn up in rank with fixed bayonets, and they, finding no way of escape with it, were obliged to put it back on a stage from which they had taken it to load the trains. At the time of stopping it we expected Captain Miles Macdonell every minute, but I was sent for him by Mr. Michael Macdonell, and to tell him what he had done. He sent word to Mr. Michael Macdonell to keep them in his possession till he should come himself, which he did. There were two train-loads,

if not three; I am sure there were two, and I think three*.

Attorney-General. *I have no questions to ask about the taking of pemican.*

HUGH SWORDS, sworn.

Examined by Mr. SHERWOOD.

Swords. I was in the Hudson's Bay Company's service the whole of the year 1814. I heard of a Proclamation issued by Mr. Miles Macdonell in that year. I never saw the Proclamation; I only heard of it. I know of one boat-load of provisions being seized by the Hudson's Bay Company's people; the provisions were on shore, and not in a boat; but they were about a boat-load in quantity; it was not in any body's possession in particular at the time we took it. A party of us were sent by Captain Miles Macdonell to go and look for provisions; which he suspected were being sent away. We went armed. I had a gun and bayonet, and ball-cartridges. A place was pointed out to us where the North-West Company had hid a quantity of provisions, and we went to it, and found about ninety-six or ninety-seven bags of pemican, which we took, and sent to Fort Douglas. The bags are made of skins, and weigh, when packed, about ninety pounds each. I have no knowledge of any other seizure of provisions being made. I know that cannon were planted, under the orders of Mr. Miles Macdonell, on the banks of the Ossiniboine River. They were placed there to prevent the North-West canoes and boats from passing into Lake Winipic, and so into the interior, or below, as they might have occasion.

Mr. Sherwood. Is this the source from which the North-West traders had been accustomed to draw their provisions?

* The provisions of which this witness speaks, had been purchased for Governor Macdonell from the hunter who had taken them, and who had actually received payment. In consequence of information, that this hunter intended to dispose of the same provisions to the North-West Company, Mr. Michael Macdonell was sent to put a stop to this attempt at fraud.

Swords. Yes, it is ; they always used to get them there.

Mr. Sherwood. Do you know of any other place where they could get them than about the Red River ?

Swords. No, I do not. I do not think there is any other, at least for a great distance.

The Attorney-General said, that he had no questions to ask of any witness who merely testified to the taking of pemican.

WILLIAM WALLACE, sworn.

Examined by Mr. SHERWOOD.

Wallace. I was in the service of the Hudson's Bay Company the whole of the year 1814. I know of a Proclamation being issued by Mr. Miles Macdonell in that year. I heard it read by Governor Auld at the fort at the Forks of Red River. It was to forbid provisions being taken away, upon pain of their being seized. Governor Auld, at the time of reading the Proclamation, told us we were not to think our own thoughts, but to obey our masters, right or wrong. Some of the people, upon hearing that provisions were to be stopped, expressed an unwillingness to be employed in stopping them ; and then Doctor Auld said it was not for us to think our own thoughts, but it was our duty to do whatever our masters ordered us, whether right or wrong.

Mr. Sherwood. Do you know of any provisions being stopped and taken possession of by your people ?

Wallace. Yes, I know of a quantity of pemican.

Mr. Sherwood. How do you know of it ? was you one of the party sent to take it, and do you remember what quantity there was ?

Wallace. No, I was not sent to take it. I was working at the time at a fort that was building, so as to prevent the North-West canoes going down the river, but I know that about ninety-six or seven bags, of about ninety pounds each, were taken, and brought to Fort Douglas, for I helped to carry it up to the store.

Mr. Justice Boulton. Is this the same lot that was sworn to have been stopped and taken by the last witness, or is it another transaction ?

Mr. Sherwood. It is the same fact, my Lord. Was you, Wallace, ever at the Saskatchewan River, or do you know if buffalo are taken between the Red River and Saskatchewan?

Wallace. I never was at the Saskatchewan; but I have always heard that they were not met with after leaving the Red River country for a very great distance.

Mr. Sherwood. You have been at Hudson's Bay, I believe; are the buffalo met with between the Red River country and Hudson's Bay, to your knowledge?

Wallace. I have been at Hudson's Bay; but there are none between it and the Red River country.

Mr. Sherwood. Then, if the traders in those parts do not obtain supplies from there, I suppose they cannot get them at all?

Wallace. That is the only place I ever knew them to be got from; they always used to get them from there.

JAMES PINKMAN, *sworn.*

Examined by Mr. SHERWOOD.

Pinkman. I was in the service of the Hudson's Bay Company in 1814, and had been for a good while.

Mr. Sherwood. Did you in that year hear any thing of a Proclamation of Mr. Miles Macdonell, usually called in that country Governor Macdonell?

Pinkman. I believe it was in 1813 that I heard of it. I heard of it at Pambina.

Mr. Sherwood. Do you know of any provisions being taken at Pambina by the Hudson's Bay people?

Pinkman. I do not at Pambina; but at the fort near Brandon House I do. I was one who went for it. I and four others went with Mr. Spencer to the North-West fort near Brandon House, and cut down the pickets, and drew the staples of the locks, and took away about five hundred bags of pemican. We cut the pickets, and destroyed the locks, because those who were in the fort refused us admittance. We asked, that is, Mr. Spencer did, to be let into the fort, which was refused, and we cut the pickets.

Mr. Justice Boulton. All this is of no manner of consequence to the charge against the prisoners; what if five

hundred bags of pemican were taken, is that any justification to go armed, and take the lives of people, because they had done wrong?

Mr. Sherwood. I think, my Lord, that this testimony is highly important. I should think, if I heard that a man yesterday killed another, and that it was likely he would attack me, it would furnish very good ground for my going armed. Our going armed was to protect our property, which had been frequently attacked, and taken from us; and I think, with great deference certainly, that I am not exceeding the necessary limits of evidence, in examining the witnesses to the fact of our property having been taken from us by the most violent means. Do you know of a quantity of pemican being seized by your people, a very large quantity, and under what circumstances?

Pinkman. I know that there was a very large quantity, as much as five hundred bags, taken from the North-West fort at Brandon House to the Hudson's Bay fort. Mr. Spencer, myself, and I think four other persons, went to the fort; but first Mr. Spencer went, either alone or only one person with him, leaving us at the Hudson's Bay fort, called Brandon House; and on his return, a messenger was sent to Fort Douglas with a letter to Mr. Miles Macdonell; and on the return of the messenger we all went to the North-West fort, and demanded admittance, which was refused. We then cut down a number of the pickets, and got into the fort. We asked where the provisions were kept; but they not telling us, we broke into the store, by drawing the staple of the lock, and found about five hundred bags of pemican, which we took away.

Mr. Sherwood. You have resided in that country some time; had the North-West traders been accustomed to draw their provisions from thence?

Pinkman. I know that as long as I have been there, and before, they were accustomed to draw their provisions from that country; and I do not think they could get them any where else.

Mr. Sherwood. Did you hear any thing about raising a troop of cavalry, or a company of horse?

Pinkman. I heard Mr. Miles Macdonell say he would raise a troop of cavalry, and scour the Plains; and that he expected they would soon be strong enough to drive those damn'd North-West out of the country.

Mr. Justice Boulton. When did you hear Mr. Macdonell say this?

Pinkman. In the winter of 1813.

Mr. Justice Boulton. Was every thing quiet then?

Pinkman. Every thing was quiet in 1813, and during the winter, till the Proclamation. There was no disturbance till the Proclamation appeared, and was acted upon.

(Mr. Sherwood stating that he had finished with Pinkman, the Court inquired of the Attorney-General if he had any questions to put to the witness).

Attorney-General. Not any, my Lords; I consider all the questions on the examination in chief as completely irrelevant, and therefore do not put any questions in cross-examination, nor do I intend to put any to any witness on the subject of seizing provisions.

Mr. Sherwood. I entertain a directly contrary opinion to that of the Attorney-General, for I consider them very relevant, and very important, highly important to the substantial justice of the case.

MARTIN JORDAN, *sworn.*

Examined by Mr. LIVIUS SHERWOOD.

Jordan. I was in the Indian country in 1814. I know that there was a battery at a distance of about three miles from the fort; it was on one bank only, and not on the banks of the river; it was on the north side of the river that they were placed; there was no particular battery more than the cannon were placed there, and men were kept to watch that the boats belonging to the North-West Company did not pass.

Mr. Livius Sherwood. Do you know of any arms having been taken from the North-West Company by your people?

Jordan. Yes; I know that a box of arms was taken :

I saw them in the canoe, and afterwards at our fort in the store.

Mr. Livius Sherwood. Was there a battery below Fort Douglas?

Jordan. Yes; there was one at the distance of about two or three hundred yards below it, on the north side.

Mr. Livius Sherwood. Do you know of any body being taken prisoner?

Jordan. Yes; I know our people took a person prisoner; Mr. House, I believe, prevented him from going away: I understood it was Mr. House, and he was in the service of the Hudson's Bay Company.

Mr. Livius Sherwood. Had you occasion at any time to hear Mr. Miles Macdonell drink any particular toast?

Attorney-General. I object to the witness being permitted to answer that question. It certainly can have no bearing upon the case; and the only purpose for which it can be put, is to place a very serious subject in a ludicrous point of view.

Mr. Livius Sherwood. I beg the Attorney-General to permit us to put our own questions; the present, however ludicrous it may appear to him, will expose a circumstance that shews the wish entertained for our destruction; and trifling as such a circumstance may at first appear, it will turn out one of those trifles which powerfully shew the real disposition of a person, and that is my object. Mr. Macdonell acted as Governor to this famous Settlement, and was the great cause, in our opinion, of all the melancholy train of events that have occurred in that country. We commence to-day our Defence with his Proclamation, which he says, and the witnesses on the part of the Crown say, was dictated only by regard to the interests of the colony, and to prevent them from starving; we, on the contrary, say, that the object and effect of that Proclamation being enforced, would be to have starved us, and consigned us to destruction. I put this question to the witness to shew, and his answer will shew, that the wishes of Mr. Macdonell for our destruction were so hearty, that he could not refrain from giving it in toasts. I now ask the

witness the question again. Did you hear Mr. Macdonell at any time drink any particular toast relative to the North-West Company?

Jordan. Yes, I heard him drink destruction to the North-West Company. He drank it in his own language, which is Gaelic. I am sure I heard him drink it.

Mr. Livius Sherwood. I hope the answer has satisfied the Court of the importance of the question, as it completely establishes, as we think, the spirit of hostility which, we say, dictated the sure means of our destruction. I shall not, however, detain the Court with any remarks on the evidence. Do you know of any person being sent to Qui Appelle from Fort Douglas with the intention of taking Mr. Macdoniell and his people?

Jordan. I cannot say whether any were sent or not. I was not one that went, if any were sent.

Mr. Livius Sherwood. Do you know whether Fort Gibraltar was taken?

Jordan. I fancy it was taken, for I was there at the time. It was in March 1816 that it was taken, but it was not destroyed then; that took place after.

Mr. Livius Sherwood. You are sure it was taken in the March preceding the battle of the 19th June: do not know if it was destroyed before the battle?

Jordan. Yes, it was. It was taken down, and sent to Fort Douglas before the battle?

Mr. Livius Sherwood. Do you know of any goods being taken away from Fort Gibraltar, at the time it was taken?

Jordan. Yes, they were loading goods at the fort, which were afterwards taken to Brandon House by Mr. Lemoine, who obtained leave to trade there. Mr. Lemoine, I believe, belonged to the Hudson's Bay Company*.

Mr. Livius Sherwood. Do you know of any bales of furs being taken by your people, and what quantity?

* No person of this name was in the service of the Hudson's Bay Company at the period referred to.

Jordan. No, I cannot say that I do. I know of some furs being there; I went out, and when I returned I found they were gone, but I cannot say where they were taken to. I heard they were taken.

FRANÇOIS TAUPIER, *sworn.*

Examined through the Interpreter, by Mr. SHERWOOD.

Taupier. I know that Fort Gibraltar was taken in March 1816, from the North-West Company by the Hudson's Bay Company's people, for I was in the fort at the time. The Hudson's Bay people came to the fort about seven or eight o'clock, one Sunday evening, in March, and got in. They bent the bolt of the gate, and so got in. They had guns with bayonets, pistols and cutlasses. They rushed directly to the great house, in which Mr. Cameron, who commanded at Fort Gibraltar, lived. Mr. Cameron was a partner of the North-West Company. I remember it was in March, and of a Sunday. I was in a small house near to Mr. Cameron's, and hearing a great noise, I went to see what it was, and finding it was in Mr. Cameron's house, I went into his apartment, and saw, as I was going in, Bourke, Heden, Alex. M'Lean, and others, belonging to the Hudson's Bay people; they were using their arms in a menacing way, presented their pistols to him, and threatened that if he moved they would take his life. When they saw me in the room, two of the men belonging to the party, but whose names I do not know, beat me with the butt end of their guns, and turned me out of the room. I know Mr. Siveright; he was a clerk to the North-West Company, and was at the fort when it was attacked.

Mr. Sherwood. Did you see the behaviour of the party to Mr. Siveright at that time?

Taupier. No, I had no opportunity, as he was in the great house, and they would not let me remain there.

Mr. Sherwood. Have you a personal knowledge of an express, conveying letters from the North-West posts, being seized?

Taupier. Yes, I have a personal knowledge that Henry

Poitras, and another man by the name of Planté, were seized, under the orders of Mr. Robertson, and these letters, taken from them.

The Attorney-General requested to have the opinion of the Court whether testimony of that nature was within the rule that was intended to guide the proceedings.

Mr. Sherwood called upon the Court to maintain the precedent which had been established in the trial of Brown and Boucher, and under the authority of which evidence had been gone into respecting the seizure of pemican. *Mr. Sherwood* then expressed the opinions he entertained respecting the conduct of persons engaged in the prosecution, and a variety of other topics, when he was stopped by *Mr. Justice Boulton*, who said that he was addressing himself to the public feelings, and indulging in declamation that was calculated to produce very pernicious innovations upon the regular practice of criminal jurisprudence.

Mr. Justice Boulton determined that the stoppage of an express was a distinct transaction, and could not be gone into.

ANTOINE PELTIER, sworn.

Examined by Mr. SHERWOOD, by the Interpreter.

Peltier. In the spring of the year 1816, I was in the service of the North-West Company, and was at their fort on Qui Appelle River.

Mr. Sherwood. Do you know any thing of a council of Indians and half-breeds being held there?

Peltier. No, I do not know that any council was held. I do not think there was any, as if there had been, I think I must have known it.

Mr. Sherwood. You are sure you do not know of a council being held, at which *Mr. Alexander Macdonell* made a harangue of a very particular description?

Peltier. No, I know of no council being held at all. I do not know of any extraordinary harangue. I know that *Mr. Alexander Macdonell* made an ordinary harangue,

but I do not know what it was about; but it was not at a council, or any meeting of the Indians and half-breeds that it was made, and it was not about any thing particular, or a council would have been held as usual. Qui Appelle was not my usual post.

Mr. Sherwood. Is it any thing uncommon for the bourgeois to harangue the Indian and half-breed servants?

Peltier. Not at all, it is very common to do so.

Mr. Sherwood. In what language was this harangue made by Mr. Macdonell, of which you speak?

Peltier. It was made in Indian.

Mr. Sherwood. Do you understand the Indian language in which the speech was delivered?

Peltier. I understand it a little; I understand it pretty well.

Mr. Sherwood. Do you understand it enough to comprehend, if any thing very particular was said in a harangue, what was meant by it?

Peltier. Yes, I do. If any thing of that kind was said, I should know what was meant. I went with the North-West people from Qui Appelle as far as Portage des Prairies.

Mr. Sherwood. While at Portage des Prairies, did you hear Mr. Alexander Macdonell make a speech to the half-breeds and Indians about drenching the land with the blood of the English, or any thing like that; any thing of that import?

Peltier. No, I did not hear any thing of the kind; I heard nothing that could be said to bear that import.

Mr. Sherwood. Did you hear a speech made by Mr. Macdonell at the Forks of Qui Appelle in French, and interpreted into Salteux Indian, in which any thing of that kind was said?

Peltier. I understand very little Salteux, only a few words, and I did not hear any speech of that kind.

Mr. Sherwood. Did you see a Mr. Pambrun at the Forks of Qui Appelle?

Peltier. Yes, I saw Mr. Pambrun there; he was on the ground, but not close when the speech was made.

Mr. Sherwood. Then he had no better chance of hearing than you, had he?

Peltier. No, I should think I had as good a chance as him, for I was close to them.

Mr. Sherwood. And you heard nothing in French or Indian, like drenching the grounds of the Indians with the blood of the English, if they made resistance?

Peltier. No, I have no knowledge of any thing of that kind. It was Primeau who interpreted, and I heard the whole of the speech, but I did not hear any expression like that of drenching the ground with blood.

Mr. Sherwood. Is it customary, upon holding a harangue with the Indians and half-breeds, to give them rum and tobacco?

Peltier. It is always done on those occasions; they look for it. I was at Portage des Prairies when Cuthbert Grant and his party set off, and I saw them start. I was present when they went away, and the instructions given to the people were, to keep as far as possible from Fort Douglas, and to pass it at as great a distance as we could, for fear some insult should be offered to us. We had some carts with provisions, which were to be taken to meet the canoes which were expected from Montreal, and which would require provisions.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. If you was present at the harangue, how happens it that you did not hear it all?

Peltier. Because I was not there all the time the speech was making. I was on the ground, but did not hear all.

Attorney-General. Mr. Pambrun is a very respectable young man. He has served as an officer in the army, and his testimony is not at all contradicted by this witness, though he did not hear the expressions sworn to by Mr. Pambrun. I will, however, put one more question to him on this point. You say you had as good a chance of knowing what passed as Mr. Pambrun, and that you know as well as him what was said; you mean, I suppose, that

what you actually did hear, you understood as well as he did?

Peltier. Yes, that is what I mean to say; that I understood what I heard as well as Mr. Pambrun, and that I had as good an opportunity to hear.

Attorney-General. Can you tell how it happened that Mr. Pambrun should have heard more than you of that speech, because he heard about drenching the ground with the blood of the English*?

Peltier. I cannot conceive how he heard more than me, but I did not hear that, nor any thing like it.

Attorney-General. Is it usual for you to have harangues made to you upon meeting a party?

Peltier. Yes, it is customary; it is common.

Attorney-General. How many carts with provisions had you, do you recollect?

Peltier. There were two carts.

Attorney-General. Though you heard these general orders given, might not Cuthbert Grant have received orders of which you do not know, or which you did not hear?

Peltier. I was present all the morning that they started, and I know nothing of any other orders being given than those I have related.

WILLIAM MORRISON, sworn.

Examined by Mr. SHERWOOD.

Morrison. I was at Portage des Prairies when a party of young men set off to carry provisions. Portage des Prairies is about sixty miles above Fort Douglas. Cuthbert Grant

* A servant of the Hudson's Bay Company, named Bird, who heard this harangue, confirmed Mr. Pambrun's testimony, in an affidavit made before Commissioner Coltman, at Red River. This person did not comprehend French, the language which Macdonell spoke, and which Pambrun understood, but he was enabled to give the substance of Macdonell's speech from being acquainted with the Indian language, in which the interpreter conveyed its meaning to the Indians.

and Mr. Alexander Macdonell were both at Portage des Prairies. There were instructions given among them I know; they were to keep as far from Fort Douglas as possible, and to give the gentlemen of the canoes notice where we had left the remainder. I was one who went. The object of our going down, was to meet the canoes from Montreal, and furnish them with provisions. That was our only object; we had no other. I do not know why we carried arms. It is very customary to carry arms there; almost every body carries his gun at all times. We came to Portage des Prairies by water, but could not go any farther, because the river was blocked up against us by the Hudson's Bay Company's servants, and we could not with safety go except by land.

Cross-Examination by the ATTORNEY-GENERAL.

Attorney-General. Do you know how long the provisions you took down with you would last sixty or seventy men?

Morrison. No, I cannot say that I do. Our allowance is a pound a day each.

Attorney-General. Did you take all you brought down in the canoes in the carts?

Morrison. No, we did not take all.

Attorney-General. You had, I think you say, two carts; how many bags did you take in each?

Morrison. There were nine or ten bags in each cart.

Attorney-General. What does a bag of pemican generally weigh?

Morrison. From eighty-four to ninety pounds each.

Attorney-General. As you had orders to avoid Fort Douglas, how happened you to make direct to the Settlement, if you had no hostile intention?

Morrison. It was our road to where we wanted to go.

Re-examined by Mr. LIVIUS SHERWOOD.

Morrison. We received instructions to pass the fort, but we had no orders to avoid the Settlement, and it was in our way to where we wanted to go.

FRANÇOIS FIRMIN BOUCHER, *sworn.**Examined by Mr. SHERWOOD.*

Boucher. I was at Portage des Prairies in 1816; I was there in June 1816. A partner of the North-West Company, of the name of Alexander Macdonell, was there; he had come from Qui Appelle. I was a servant of the North-West Company at the time. I know of provisions being sent from Portage des Prairies at that time, and Cuthbert Grant as well as myself were of the party that took them. They were designed for the supply of canoes expected from the interior and from Lower Canada. The object of going by land was to avoid Fort Douglas; the passage of the river also was obstructed, and we understood they watched for us at Fort Douglas. The orders given by Mr. Macdonell were, to go past the fort at as great a distance as possible, so as to avoid being seen and having difficulty. Those orders were strictly obeyed. We went as far back as we possibly could; we could not go farther, for there was a swamp, in which it was impossible the carts could get on, as the horses sunk up to their bellies; but we passed the fort at as great a distance from it as we could. After we got by the fort, about two miles, we observed Mr. Semple and an armed party coming towards us, at which we were much surprised, and we stopped. They came up in a line, as if they were prepared to attack us, and we thought they intended to do so. Some of our party said, that as I spoke a little English, I had better go up and speak to them, and see what they wanted, that they came after us. I went according to their desire. I rode up quickly, and before I got close up to Mr. Semple, I asked what they wanted, that they pursued us. I told him that we were afraid he meant us harm, by following us, and some other words passed. He had laid hold of my bridle on my coming up, and he then laid hold of my gun. I told him I had not come out to fight. Upon my saying this, Mr. Semple called out to his people to take that rascal prisoner. Some of them

then came up to me, armed with guns and bayonets, in a threatening manner, and I cried out to them, "*Prenex garde de ne me faire du mal.*" At this time my people came up. Seing our people advance, some of them cried out, "We are all dead men! My God, we are all dead men!" There had not been any firing at this time, on either side.

Mr. Sherwood. Upon this expression of his people, that they were all dead men, what did Mr. Semple say?

Boucher. He called out, "You damned rascals, this is no time to be afraid," and immediately two guns were fired from Mr. Semple's party.

Mr. Sherwood. Were those two guns fired at you?

Boucher. I do not know whether the first was or not; they were let off very close together, and the second must have passed very near me, as I heard it hiss close to me. I then threw myself from my horse, which was very much frightened by the shots, and run the distance of gunshot without stopping, and remained where I stopped till the battle was ended. The battle lasted about a quarter of an hour, and I staid at the place where I first stopped till it was over. I was lying the whole time flat on my belly in the grass, which was very high. After the two first shots a volley was fired directly: but, as the firing became general, I cannot say positively by which party, but I think it was by the Hudson's Bay people.

Mr. Sherwood. Do you know how many volleys were fired by either of the two parties?

Boucher. No, I cannot tell that, it is impossible, as immediately after the two first shots the firing became general.

Mr. Sherwood. Had there been any injury done to the Hudson's Bay people before the assault committed on you, and their firing the two shots you have spoken of?

Boucher. No, not that I know of. Indeed I know that there had not, for I was present all the time, and I have told all that passed before the firing became general.

Mr. Sherwood. Have you any knowledge of any injury

being done to them after the battle, when, I believe, from their own account of the matter, they were entirely in your power, that is, in the power of your party?

Boucher. I do not know of any injury being done to them. They were entirely in our power after the battle, and I know there was no injury done to them whatever*.

Mr. Sherwood. When the servants of the Hudson's Bay Company and the settlers went away, was an escort given them, to see them safe from any attack that they were afraid might be made upon them?

Boucher. At the time they went away there was a good deal of confusion, and some of them came and asked me to protect them against the half-breeds, and I conducted them as far as the Frog Plains, where I returned, and they continued their route. I did not see any cannon in the engagement, but I saw one afterwards, belonging to the Hudson's Bay party. We did not bring any with us, I am confident.

Mr. Sherwood. You are quite certain that it was pemican, and not cannon, that you had in the carts that accompanied you?

Boucher. Yes, I am sure it was pemican.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. Was you at Fort William after the 19th June?

Boucher. Yes, I came down there some time after.

Attorney-General. You have sworn to-day, that the only object you and your party had in coming from Portage des Prairies was to conduct in safety some provisions to meet canoes which were coming from the interior, and from Montreal; have you never given any other account of your object?

* On the trial of Paul Brown, for the robbery of Heden, on Thursday, the 29th October, this witness (see p. 342,) swore that one of the half-breeds, named Caribou, had committed the robbery of which Brown was accused. To rob a settler, therefore, was "no injury whatever."

Boucher. I may, when I was not under oath.

Attorney-General. Did you never say that your object was to destroy the Settlement, and the way you proposed to effect it was by starving the colonists?

Boucher. I might have said so when I was not under oath; I may have told persons so.

Attorney-General. Did you ever tell any body that your object was to take Fort Douglas?

Boucher. I do not know that I ever told any body so, but I might have said so.

Attorney-General. Had you no intention to offer violence to any person, but simply to conduct your provisions?

Boucher. I never had the slightest intention to do any body any harm; I was sent with the provisions.

Attorney-General. Did you not hear it mentioned that you were to take Fort Douglas?

Boucher. No, I never heard any thing of the kind. I heard that they intended to retake Fort Gibraltar, if it was not given back to them, but I heard nothing of taking Fort Douglas.

Attorney-General. Did they go down avowedly to retake their fort, as you say, or to take Fort Douglas?

Boucher. All I heard was, that while down, they would get their fort again, and the provisions which had been taken from them; but I do not know what was their object, unless it was to take the provisions.

Attorney-General. Did Mr. Grant never communicate to you what his intentions were?

Boucher. No, he never did. I know that his directions from Mr. Macdonell were to go below some distance, and wait there for the arrival of the canoes.

Attorney-General. And if you had not been attacked, you really believe Mr. Grant would have stopped there?

Boucher. Yes, I certainly believe he would have followed his orders, by stopping till canoes came, either from above or below; I have no reason to think otherwise.

Attorney-General. Do you know, as these were his intentions, how it happened that, before any notice of the

approach of Governor Semple and his party, your people made prisoners of some of the colonists?

Boucher. No, I do not know how it happened.

Attorney-General. But you know, I presume, that prisoners were made before your people saw Governor Semple's party?

Boucher. Yes, I know there were prisoners made, because I saw them, but I do not know by whom they were made so. I saw two women and one man. I cannot positively say they were prisoners, but I understood they were. I saw one at a free man's house, who is now here, and can tell you more about it.

Attorney-General. I ask you again, was you not told, before you went away, that the party were going to make prisoners of the colonists, and thus break up the colony?

Boucher. No, I was not told so. I never heard that they were going to take prisoners.

Attorney-General. Have you never told any body so?

Boucher. I never told any body so.

Attorney-General. Do you recollect what you said upon this subject when you was before Mr. Mondelet?

Mr. Sherwood. I will not let him answer that question, or give any information of what passed before Mr. Mondelet. Indeed I am rather surprised, after the opinion of the Court, expressed on the trial of Boucher and Brown, when this same Declaration was attempted to be made evidence, and withdrawn by Mr. Attorney-General, that he should desire to examine Boucher upon it, for the purpose of making that same Declaration evidence against the accessaries, which he was prevented from using against the principal who actually made it. Nothing that passed before Mr. Mondelet shall be made evidence here.

Attorney-General. Did you never to any body say, that the intention of your party was to reduce the fort by famine?

Mr. Sherwood. If you ever said any such thing to Mr. Mondelet, you have no occasion to tell; indeed you must not mention any thing you may have said before Mr. Mondelet.

Attorney-General. I ask you if, in the presence of any other person than Mr. Mondelet, you have not said that the intention of your party was to reduce it by famine?

Boucher. I was once asked by Mr. Stuart at the same time—

Mr. Sherwood. The witness is improperly led to mention the name of Mr. Stuart. I have the highest respect for that gentleman. His name ought not to be called in question. I object to the indelicate course taken by the Crown in this part of the cross-examination.

Attorney-General. Did you never, in the presence of any other person, say that the object of your party on the 19th June was to starve the fort into a surrender?

Boucher. I do not believe I ever said so.

MICHAEL MARTIN, *sworn.*

Examined through the Interpreter, by Mr. SHERWOOD.

Mr. Sherwood. Was you at Portage des Prairies in June 1816, when the party set off to carry provisions to meet the canoes, which at that season are expected from Montreal and the interior?

Martin. Yes, I was there; I was one that went. Our orders were to go by Fort Douglas, at as great a distance from it as possible, and we did so.

Mr. Sherwood. Why were you told to pass at a distance from Fort Douglas? do you know of any reason?

Martin. It was to prevent our losing the provisions we had with us, and to avoid being insulted. We had two cart-loads of provisions for our gentlemen, whom we were to wait for below. I was in the battle of the 19th June with the Hudson's Bay people. The Hudson's Bay people fired first; they fired two shots before we fired any, for I saw them. I did not hear Boucher ordered to go, but I saw him as he was going, and I saw him when he had got up to Mr. Semple; and whilst he was very near Mr. Semple, I heard and saw a gun fired, and I know it was by the Hudson's Bay party, because I saw the smoke.

Mr. Sherwood. Had you any intention to do any harm to the Settlement when you set off from Portage des Prairies?

Martin. None whatever; we did not think of it.

Mr. Sherwood. Afterwards, when the settlers were in your power, did you do them any harm?

Martin. No, I am sure we did not.

Mr. Sherwood. Had you any intention of attacking the Settlement, or Mr. Semple, if he had not attacked you?

Martin. No, that I am sure we had not; if he had not come out to us, we should not have gone to him.

Mr. Sherwood. You are a christian, I presume, and have been baptized, have you not?

Martin. I am a christian, and was baptized in Lower Canada.

ROBERT HENRY, *Esquire, sworn.*

Examined by Mr. SHERWOOD.

Mr. Henry. I left Montreal, as soon as the ice broke up in 1816, in company with Mr. M'Leod, Mr. M'Kenzie, Mr. Misani, and Mr. Brumby, to go to Fort William. From Fort William we were to go into the interior; our object in going there was to secure provisions for our traders and servants, as we had great reason to apprehend that they would be taken from us, or be attempted to be taken from us, as they had been in 1814. We had the usual assortment of goods taken up into that country with us; amongst them were some *equipments*, of course. We got a piece of ordnance at Bas de la Rivière, where we stopped on our way up, as we usually obtain our provisions there.

Mr. Sherwood. Did you get them as usual this time?

Mr. Henry. No, and so we were determined to take all the people we could muster, and go up and ascertain the reason. We had to pass Fort Douglas on our route from Bas de le Rivière, and having heard that we were not to be allowed to go by it, we took these precautions to protect ourselves. Our object was to avoid hostilities, if

possible, but at all risks to defend our property and our persons, if attacked. We had no wish to interfere with Fort Douglas, but we were determined not to be prevented from passing it, and pursuing our commerce. If they would not let us do it peaceably, it was their fault if any thing happened. We intended to pass by day-light, and to go by Fort Douglas singing; and if they did not molest us, we had no wish to say any thing to them; but if they did, we were determined to defend our persons and property to the last.

Mr. Sherwood. Did you, Sir, on your route, meet any of the defendants? *Mr. M'Kenzie*, I believe accompanied you from Montreal?

Mr. Henry. *Mr. M'Kenzie* went with us from Montreal, and in the course of the route, I met most of the other gentlemen; I believe all.

Mr. Sherwood. I will not question you, Sir, at all about the affair of the 19th June, but I will ask you if, after that time, you saw a *Mr. Pambrun* in company of those gentlemen?

Mr. Henry. Yes, I often saw *Mr. Pambrun* at table with those gentlemen; I have seen him frequently.

Mr. Sherwood. Did you, Sir, consider those gentlemen, or any of them, as accessaries to murder?

Mr. Henry. No, that I did not; I should have been sorry to have been in their company if I had done so.

Mr. Sherwood. *Mr. Pambrun* has told us he does consider them so. Pray, Sir, did you see any reluctance in *Mr. Pambrun* to partake of the hospitalities of your table along with those gentlemen?

Mr. Henry. No, certainly not. If he had had any objection, nobody would have forced him to dine with them.

Mr. Sherwood. Do you happen to know whether the North-West Company ever granted this *Mr. Pambrun* any favours, as he considered them at the time?

Mr. Henry. I know that he received many favours from the Company, for which, at the time, he appeared grateful. I know the Company exerted themselves relative

to his half-pay, and I believe it is owing to their exertions that he now receives it*.

Mr. Sherwood. And he evinces his gratitude by presuming you are a set of murderers, or accessaries to murder, and says he considers himself disgraced by sitting at the same table with his benefactors.

Cross-Examination by the SOLICITOR-GENERAL.

Solicitor-General. I think you said, Sir, that neither you, nor the party with you, had any intention to molest Fort Douglas?

Mr. Henry. I have said we had no intention to molest it, nor had we any design of doing so.

Solicitor-General. Have you any recollection of ever writing a letter, in which a very different sentiment was expressed, but expressing your satisfaction at finding it already taken? Do you recollect writing such a letter to a Mr. Henry?

Mr. Henry. I do not recollect that I did, but I may have said to Mr. Henry in a letter, that I was glad it was already taken; I will not say that I have not†.

* This statement is totally unfounded. Mr. Pambrun has always obtained his half-pay without difficulty, through the medium of his agent, who has no connection whatever with the North-West Company.

† The Solicitor-General might have produced the letter alluded to, which, when compared with Mr. Henry's testimony, would certainly have given the Jury a high idea of the credit due to this partner of the North-West Company. In a letter, dated Fort William, 3d of June, 1816, about a fortnight previous to the attack upon the Settlement, after mentioning that "we have sent off an express to Fond du Lac, to raise the Indians, and meet us at Red River; and we also take some of the Lac la Pluie Indians," this Mr. Henry writes, "we start to-morrow for Red River, about fifty men and gentlemen. I would not be surprised if some of us should leave our bones there. In case it may be my fate, is my reason for writing you at present. I am very much afraid it will be a serious business, but I hope for the best. I expect William will come out, in which case he will certainly go down; and should I return from Red River safe, I feel much inclined to leave this rascally country for ever." In another letter, dated Fort William, 22d July, 1816, he says, "I wrote you when I left this for Red River. Nothing of importance occurred on our way there. We arrived at that place the 22d of June, and, thank God, three days after the battle with the half-breeds and Hudson's Bay people."

Solicitor-General. But you are quite sure that you and your party had no intention of attacking it?

Mr. Henry. If they did not attack us, we had no intention of molesting them; but if they did interfere with us, we were determined to defend ourselves to the last.

Solicitor-General. You appear to have been prepared for an attack?

Mr. Henry. The impression upon my own mind, and I believe upon others too, was, that we should not be permitted to pass without being attacked; and therefore I thought it best to be prepared: but it never was our intention to molest them, though we were prepared to resist any outrage committed upon us; and it might be in this way, if I did write it, that I said I was glad that Fort Douglas was taken already. I might have forgotten to explain myself fully. It was confidently expected that we should be attacked at Fort Douglas, and Mr. Henry living at a distance, I might, in writing hastily to him, have said that I was glad it was already taken, meaning I was glad we had no difficulty.

Solicitor-General. Do you recollect, when at Fort William, writing to a person at Fond du Lac, to raise the Indians in that quarter, to march to Red River, to meet you there upon your arrival?

Mr. Henry. I did write such a letter, and my reason for doing so was, that, if our provisions were taken from us, and we were not permitted to carry on our trade, they too would suffer as well as ourselves; and I thought, if a strong party, capable of defending ourselves, and carrying our point, were seen by the Hudson's Bay people, it might prevent our being attacked; and if it did not, we should be better prepared to defend ourselves.

Solicitor-General. This was before Lord Selkirk took possession of Fort William, I presume?

Mr. Henry. Yes, it was.

"I thank Providence, that the battle was over before we got there, as it was our intention to storm the fort. Our party consisted of about one hundred men, seventy fire-arms, and two field-pieces."

Re-examined by Mr. LIVIUS SHERWOOD.

Mr. Livius Sherwood. Though before Fort William had been taken, it was not before Fort Gibraltar had been taken, I believe, nor before the express had been stopped, and his letters taken from him, that you wrote to Fond du Lac?

Mr. Henry. It was after we had heard that Fort Gibraltar had been taken, and that our express had been made a prisoner and robbed of his letters; and from these, apprehending that further aggressions would be committed, and that our provisions would be prevented from coming down the Ossiniboine River, we did this; and although we went up with a strong party, and with arms, they were only to act in self-defence.

Re-examined by the SOLICITOR-GENERAL.

Solicitor-General. Are not you, or were not you, indicted for this offence at Montreal, or in the province of Lower Canada?

Mr. Henry. I do not know that I am. I believe not.

JAMES LEITH, *Esq. sworn.*

Examined by Mr. SHERWOOD.

Mr. Leith. On the 13th June, 1816, a number of the North-West gentlemen came to my post at Rainy Lake, and amongst them some of the present defendants.

Mr. Sherwood. You, Sir, I believe, are a partner of the North-West Company, and are acquainted with the nature of their trade?

Mr. Leith. I am a partner, and have a knowledge of the mode in which the business is conducted.

Mr. Sherwood. You have, Sir, in your employ a great number of servants of different grades. Do you clothe them all, or furnish them with what, I believe, you are accustomed to call equipments?

Mr. Leith. They are all furnished with what we call equipments, by the Company, and some with double.

equipments ; but all, whether clerks or voyageurs, have equipments found them by the Company.

Mr. Sherwood. What number of equipments do you dispose of annually ?

Mr. Leith. I cannot say ; but they amount to some hundreds.

Mr. Sherwood. Did you go on with these gentlemen to Red River, and take with you what people you could spare ?

Mr. Leith. Yes, I did accompany them, and my people, and a number of Indians went also.

Mr. Sherwood. You doubtless knew their intentions well ; will you please to tell us what their objects were ?

Solicitor-General. This gentleman may tell us what influenced him ; but what they might tell him their intentions were, can be no evidence.

Mr. Sherwood. Have the goodness, Sir, to tell us what led you and your party to go to Red River.

Mr. Leith. In March or April, I received letters informing me that Mr. Duncan Cameron and Seraphim Lamarre were taken prisoners, and that the general report was, that Fort Gibraltar was to be attacked in the spring. I forwarded the information by express to the agents and partners of the Company. I afterwards learned that Colin Robertson and a party had taken it, and also that we were not to be permitted to pass up the Ossiniboine and Red Rivers. Knowing that hundreds of our servants must be starved if this was submitted to, we determined to go in considerable force, and see whether we were to be prohibited trading or not, and also to make the necessary arrangements for preventing disappointment in future. We had, undoubtedly, no other intention than to go quietly, if we were not molested ; but we were determined not to submit to any attempts to hinder us from passing quietly, and we were in hopes, that by taking a large force we should induce them not to molest us in our passage. We stopped in our way at Bas de la Rivière, and there two of the boats took in a piece of ordnance each, and we then proceeded on our route, wishing to meddle with

nobody, but determined not to be prevented from proceeding up the river, which we considered, as the great highway of the country, we had a right to. If we were obstructed, we determined to defend our right at the risk of our lives.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Solicitor-General. There were cannon at Bas de la Rivière, which you took with you?

Mr. Leith. Yes, we took two pieces of ordnance.

Solicitor-General. Do you know where they came from to Bas de la Rivière?

Mr. Leith. No, I do not. I only know that they were there, and that we took them with us.

Solicitor-General. Have you no knowledge that they had been taken from the colony at Red River?

Mr. Leith. I cannot say whether they were, or were not. I know nothing about them.

The Hon. WILLIAM M'GILLIVRAY, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Sherwood. You, Sir, are, I believe, the senior partner of a very extensive commercial establishment, called The North-West Company, trading into the Indian country?

Mr. M'Gillivray. I am senior partner of that Company.

Mr. Sherwood. Is it the duty of the gentlemen stationed in the interior, to give you notice if any thing particular occurs near their respective posts?

Mr. M'Gillivray. It is their duty to do so.

Mr. Sherwood. In the early part of 1816, did you, Sir, receive any information from the Red River country?

Mr. M'Gillivray. About the end of March, an express arrived at Montreal with letters from Red River, (brought by one La Gimonière.) Their contents were public enough, viz. that Fort Gibraltar, one of our stations on the

Red River, had been taken by Lord Selkirk's people in October 1815; that Mr. Duncan Cameron, one of our partners, and a clerk, had been taken prisoners; and threats were made use of, that all the rest of our posts should be taken.

Mr. Sherwood. Will you relate any measures of precaution that were taken, to prevent or counteract the inconveniences threatened by this and similar conduct?

Mr. M'Gillivray. To do so will lead me into rather a long statement, as there are a variety of circumstances connected with the transactions of that time, that it will be necessary to explain, so as to enable the whole to be understood.

Mr. Sherwood. It is very important, Sir, that we should have the information you refer to. Will you therefore give us a succinct narrative of what measures were taken in consequence of the communication you received from Red River, or, indeed, any information which you may consider calculated to throw a light upon the transaction of the 19th June, 1816?

Mr. M'Gillivray. In the early part of 1816, and particularly after receiving the information I just now alluded to from Red River, we became apprehensive that the same game would be played again which had been played in 1814; for, owing to these seizures, and the enemy being in possession of the communication from Upper Canada, which prevented the agents of the North-West Company from forwarding provisions as usual, our stock had been reduced so low at the depôts, that we were left greatly dependent on the quantity to be collected in the interior country, and the securing it became an object of the greatest importance to us.

Mr. Sherwood. It was in 1814 that your provisions were seized in various places, and under the assumed authority of Mr. Miles Macdonell, I believe?

Mr. M'Gillivray. They were taken in that year principally, and it was to that I referred; for their captures, in conjunction with the circumstances of the war with the United States, which had employed a great proportion of

*the Indians**, had reduced our stock very low, indeed so low, that, unless considerable precaution was used, many of our most distant posts might be exposed to starvation. After numerous consultations among our partners, it was determined to send an agent, and as many of our partners, and of the clerks, as could be spared, into the interior, in order to protect the provisions in case they should be attacked. My fear was, that the plan laid some time before for our destruction, by depriving us of our supply of provisions, might be carried into effect; and also that, unless our people farther in the interior than Red River received timely notice of the capture of Fort Gibraltar, *which was the post they were accustomed to deposit their returns at*, our furs might also be stopped.

Mr. Sherwood. Had you, Sir, any communication with Government on the subject of affairs in the Indian country?

Mr. M'Gillivray. I had. Upon receiving information officially from His Excellency, Sir Gordon Drummond, of the intention of the Government to furnish Lord Selkirk a body guard from the military, I remonstrated against it, and pointed out what, in the exasperated state of the country, I feared would be the consequence of such a step. I should, with my knowledge of the Indian country, have thought myself highly criminal, if I had not called the attention of Government to what was going on, and what I foresaw would be the result of the measures which were pursuing; but unfortunately my representations were not attended to in time.

Mr. Sherwood. Upon the subject of military protection or countenance being given, did you make any representation to Sir Gordon Drummond?

Mr. M'Gillivray. I did, and my reason for doing so was this: I knew what the consequence would be to the traders in the Indian country, if once the Indians were persuaded that one Company was peculiarly protected by Go-

* Among the Indians who joined the British standard during the late war with the United States, there was not one from the whole extent of the country, in which the North-West Company carry on their trade.

vernment, or had any exclusive privileges ; and I was fearful that the circumstance of a body-guard being furnished to his Lordship might be used so as to induce the Indians to believe that the exclusive protection of Government was given to his party.

Mr. Sherwood. Did you, Sir, apply to Government to nominate some person to go into the Indian territory and report the state of affairs ?

Mr. M'Gillivray. I did. We had been accustomed to protect our own trade ; indeed, till lately, it was very little protection that it required. Fearing the use that might be made of this military guard, I thought it highly necessary that we also should have some proof of the protection of Government being equally extended to us as to others ; and I therefore made application to Sir Gordon Drummond, to give leave of absence to two officers of respectability, that they might accompany our partners to the interior country, in order to enable us also to say to the Indians, that we had the protection of Government as well as our opponents. Permission was accordingly given to Lieutenants Brumby and Misani to accompany our gentlemen, and at the breaking up of the ice, every thing having been previously prepared, they left Montreal*.

* The views of the North-West Company extended rather farther than this. In the letter addressed by Archibald N. M'Leod, to the person in charge of Fond du Lac department (see note at page 274), these officers are referred to as a proof that the North-West Company enjoyed the exclusive protection of Government, and had their authority for the measures they were taking against the Settlement : and if the Attorney-General had thought fit to pursue the examination of Huerter a little further, he might have shewn that this pretext was employed to induce the Indians of Rainy Lake, to obey Mr. M'Leod's orders, and accompany him to Red River.

If this subject had been pursued on the cross-examination of Mr. M'Gillivray, the colour which has been given to it would have been removed. More than twelve months before the period here alluded to, by Mr. M'Gillivray, viz. in the year 1815, Lord Selkirk made application to His Majesty's Government, not for a body guard, but for a small detachment of the King's troops to be stationed for some years at Red River, for the protection of the people, and the preservation of the peace. Orders were accordingly transmitted to the officers then commanding the forces in Canada, but the amount of the party to be sent being left to his discretion,

Mr. Sherwood. Did you accompany these officers yourself, Sir?

Mr. M'Gillivray. No, I remained at Montreal until my usual time of setting out for Fort William. I arrived at St. Mary's on the 17th June, and there I received letters from Mr. Leith and others, giving accounts of the depredations committed at the Red River by Lord Selkirk's people.

Mr. Sherwood. And for the reasons you have stated you made the various representations to His Majesty's Government on the subject of Indian affairs?

Mr. M'Gillivray. Yes, as far as I remember, those

that officer thought fit to consult Mr. M'Gillivray on the subject, and upon his advice, refused altogether to grant the desired protection. It cannot be doubted, that if a detachment of the King's troops, however small, had been stationed at Red River, it would have overawed any violent attempt, (if any had been in contemplation,) for depriving the North-West Company of their provisions: if Mr. M'Gillivray did really entertain such apprehensions, and if his views had been limited to self-defence, it is inconceivable that he should have opposed the measure in question. In fact, the very circumstance of Lord Selkirk's having applied for this species of protection, goes far to prove that no such views were entertained as Mr. M'Gillivray ascribes to the officers of the Settlement. On the other hand, it deserves to be noticed, that at the very moment when Mr. M'Gillivray was expressing to the Governor of Quebec, his remonstrances against sending any troops to Red River (*viz.* in June 1815) his partners Alexander Macdonell, and Duncan Cameron, were actively engaged in effecting "the downfall of the colony," by the disgraceful proceedings that are detailed in the evidence of Miles Macdonell, John Pritchard, and others, given on the trial of Colin Robertson and others (see p. 14 to p. 22). The presence of the King's troops at the Red River, could not be very acceptable to an association whose designs against the Settlement are expressed in language not to be misunderstood, in a letter dated the 5th of August, 1814, written and signed by Alexander Macdonell, one of the partners, and directed to another, the brother-in-law of Mr. M'Gillivray. "You see myself, and our mutual friend Mr. Cameron, so far on our way to commence open hostilities against the enemy on Red River. Much is expected from us, if we believe some, perhaps too much. One thing certain, that we will do our best to defend, what we *consider* our rights in the interior. Something serious will undoubtedly take place. Nothing but the complete downfall of the colony will satisfy some, by fair or foul means—a most desirable object, if it can be accomplished. So, here is at them with all my heart and energy."

were the reasons. With my experience for thirty years in that country, I should have considered myself as inexcusable, if I had not endeavoured to call the attention of Government to what was the actual state of affairs there, and I can only regret that my representations were not earlier attended to.

Solicitor-General. I am sorry, my Lords, to make any opposition to Mr. M'Gillivray's relating every thing which he considers important to the gentlemen in whose behalf he is brought forward as a witness; but the detail of facts, into which the questions of the learned counsel have led him, cannot be considered, I think, as any way connected with the cause at present under trial, and therefore ought not to be continued.

Mr. Sherwood. The preliminary questions which, for the purpose of letting the Jury clearly understand the case, I thought it expedient to put to Mr. M'Gillivray, are finished, and I proceed immediately to points that have already been given in evidence. My first object will be to explain how it happened that equipments were given to the servants of a Company who are constantly accustomed to clothe the whole of their very numerous servants; a circumstance about which a great deal of art has been used. I believe, Sir, Mr. M'Leod was among the gentlemen who accompanied these officers whom you had so properly applied to Government to allow to visit the interior?

Mr. M'Gillivray. Mr. Archibald Norman M'Leod was the Agent of the Company who went with those gentlemen.

Mr. Sherwood. Have you any knowledge, Sir, of any equipments going up with those gentlemen?

Mr. M'Gillivray. There were a quantity of equipments, about thirty or forty suits, as I think*.

* In this examination two things are confounded which are entirely distinct. The North-West Company, as well as other persons engaged in the Indian trade from Canada, furnish each of their servants with an annual allowance of clothing and other necessities, the particulars of which

Mr. Sherwood. Was that a very extraordinary circumstance, that canoes going to the interior should take up equipments? I am desirous of knowing whether it was a circumstance calculated to excite surprise, and manifesting some improper design, or is it a usual occurrence?

Mr. M'Gillivray. It is a very common occurrence; so common, that all the canoes that go up take more or less of them.

Mr. Sherwood. In the very extensive commercial pursuits of this respectable Company, of which you are the head, I presume you have occasion to employ a great number of servants of different descriptions, whom, I believe, you furnish generally with clothing?

are generally specified in their contracts, and form, therefore, a part of the regular and stipulated remuneration of their service. This annual allowance is called the "*Equipement*." The term "*Habillement*," is applied to a suit of clothing bestowed as an extraordinary gratuity, in consideration of some peculiar merit or service, and given at the discretion of the master, over and above the annual stipulated "*equipement*."

The evidence of Huerter and Pambrun distinctly prove, that the "*habillements*," distributed by M'Leod to the half-breeds, who had been engaged in the murders of the 19th June, did not form any part of the ordinary allowance of clothing to the servants of the North-West Company. Huerter particularly specifies, that M'Leod, in his speech to the half-breeds, mentioned his having brought "*habillements*" for them, and that these were not the regular equipments. Pambrun says, that he gave them presents of clothing, and that one of the half-breeds shewed him what he had received, and said that it was for the 19th June. This evidence might have been corroborated, if the Attorney-General had thought fit. It might have been proved that others of these men received presents at Fort William, exactly similar to those distributed by M'Leod at Red River. A paper in the hand-writing of Sivewright (one of the prisoners) had also been communicated to the Attorney-General, entitled, "List of the Brulés who received *habillements* on the 26th June." On the reverse of the same paper was a list of others of the half-breeds, who were engaged in that horrid transaction, apparently an enumeration of those who had not yet received this gratuity. This list was found in the desk of an officer at Fort William, where the equipments are made up and distributed. Bills of lading of some canoes which went to Red River with Mr. Alexander Macdonell, were also found, containing several "*habillements*" for a number of the half-breeds who remained to be supplied. Bills of lading were also found of the cargo which had been made up at Fort William for some other canoes; destined for Red River: and this cargo contained "*equipements*" for almost all the individuals who were specified in Mr. Sivewright's list as having received "*habillements*" on the 26th June.

Mr. M'Gillivray. We have a great number of persons in our employ, in different situations, as clerks, voyageurs, and in other capacities, whom we supply indiscriminately with equipments; they form a part of their remuneration, and are invariably supplied by the Company.

Mr. Sherwood. Then, Sir, equipments must form a very considerable item of expenditure annually?

Mr. M'Gillivray. They do. It amounts to a heavy sum.

Mr. Sherwood. Have you any knowledge of how many hundred, or thousand, suits, (for, so extensive as your concern is, probably they amount to thousands,) are required annually?

Mr. M'Gillivray. I cannot say; but it is a great number, and they are attended with a very heavy expense.

Mr. Sherwood. What, Sir, is the food principally depended upon for the supply of the traders?

Mr. M'Gillivray. A preparation of dried buffalo meat, called pemican.

Mr. Sherwood. Could your trade be carried on without pemican in that country?

Mr. M'Gillivray. I certainly do not believe that it could.

Mr. Sherwood. Is it from the Red River country that you have been accustomed to be supplied with pemican?

Mr. M'Gillivray. It is from there we have always drawn our supplies, as the buffalo abounds on the extensive plains in and about that part of the Indian country.

Mr. Sherwood. If you were deprived of your ordinary supplies in that quarter, is there any other place from which you could receive them?

Mr. M'Gillivray. There is another place, but it is at a great distance, and the buffalo are not so plentiful as in the neighbourhood of Red River: we always have been accustomed to get them from here, and it is the most convenient, being near our route.

Mr. Sherwood. Have you been, till within these few years, accustomed to trade in the Indian country, upon Lake Winipic, and the rivers leading into it, or out of it, without molestation or interruption?

Mr. M'Gillivray. We have for years, I believe, before

the conquest. We have, to my own knowledge; for upwards of thirty years.

Mr. Sherwood. Were there, Sir, when you first went into that country, any Hudson's Bay traders accustomed to visit it?

Mr. M'Gillivray. There were not any established in it, nor for some years afterwards; for at least eight or nine years after.

Mr. Sherwood. Then to your knowledge, to go no farther back, you were accustomed to trade for nine years in the country before these persons came to it, who now want to turn you out of it?

Mr. M'Gillivray. It was nine years after I had been used to trade into that country, that I first saw any Hudson's Bay people on the Red River.

Cross-Examination, conducted by the SOLICITOR-GENERAL.

Solicitor-General. Are you sure there was no intention to take Fort Douglas on the part of the gentlemen who went with these officers you have spoken of?

Mr. M'Gillivray. It was never dreamt of; they had no such design, I am sure.

Solicitor-General. For whom, Sir, were these clothes particularly intended which were taken up by Mr. M'Leod?

Mr. M'Gillivray. They were intended for the Bois-brulé servants of the Company, I believe; but I cannot say positively that they were. For the space of two years previous to this period, I know there had been a contest between the North-West Company and the Hudson's Bay people and Lord Selkirk's agents, who should most attach the Brulés to their interest: these clothings or equipments were therefore given to the gentlemen going up, to be applied discretionally, as they might best conciliate the engagés or natives, without any restriction whether they should be given to Whites or Brulés.

Solicitor-General. Have you not a knowledge that they were directed to be given to those who had been the most active in opposing the Hudson's Bay Company?

Mr. M'Gillivray. I do not know whether any such orders were given or not. I did not hear of any such.

Solicitor-General. Had you any reason to apprehend such a dreadful occurrence as this, from any thing you had heard on your way to Fort William?

Mr. M'Gillivray. With the experience I had in Indian affairs for upwards of thirty years, it was impossible not to foresee that some dreadful catastrophe must happen. I made representations to the Government, which unfortunately were not attended to in time, and the melancholy affair of the 19th June took place. As soon as I knew of our fort at Red River being taken in March, which was at St. Mary's, on my way to Fort William, I wrote to Montreal, and it is singular, that at the very time I was expressing my apprehensions of the dreadful consequences to be expected from these outrages, the battle of the 19th June took place, of which I was informed after my arrival at Fort William. In consequence of my letter from St. Mary's, Mr. Richardson, at my request, proceeded to the seat of government at Quebec, with all the information I had been able to obtain upon the subject, and again urged the indispensable necessity of appointing an officer, clothed with sufficient authority to keep the peace in the Indian country, and investigate the state of things.

Re-examined by Mr. SHERWOOD.

Mr. Sherwood. How long, Sir, have the Hudson's Bay Company and Lord Selkirk traded in to that country?

Mr. M'Gillivray. The Hudson's Bay Company were accustomed to trade here before the establishment of the colony by the Earl of Selkirk.

Mr. Sherwood. When was this colony begun?

Mr. M'Gillivray. It was begun about 1812.

Mr. Sherwood. Had you difficulties with the Hudson's Bay Company, or did they commence with the establishment of this colony?

Mr. M'Gillivray. We had no extraordinary difficulties till the establishment of this colony in 1812; I do not say there were none, but there were none of any magnitude.

Mr. Sherwood. Pray, Sir, do you know a Mr. Pierre Pambrun, a half-pay officer?

Mr. M'Gillivray. Yes, I know something of him.

Mr. Sherwood. You, Sir, I believe, have admitted him to your table. Did he appear to think himself disgraced or honoured, by being permitted to take his seat there with yourself and friends?

Mr. M'Gillivray. He certainly did not consider himself disgraced, I should think.

Mr. Sherwood. Did you ever observe any reluctance in his conduct to sitting with those gentlemen?

Mr. M'Gillivray. Assuredly not.

JOHN THEODORE MISANI, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Misani. I left Montreal in the spring of 1816, to go to the Indian country, in company with Mr. Archibald Norman M'Leod, Mr. Alexander M'Kenzie, and Mr. Henry. We stopped at Fort William, and we found Dr. M'Laughlin there. We left him at Fort William.

Mr. Sherwood. Did Mr. Simon Fraser, or Mr. John M'Donald, accompany you?

Mr. Misani. No, they did not.

Mr. Sherwood. Where, in your route, did you first see them?

Mr. Misani. I first saw them on my return from Fort Douglas, at Rivière aux Morts; they had come from their winter quarters.

Mr. Sherwood. Was it possible these gentlemen could have come from Red River?

Mr. Misani. No, because I must have met them in going up, as I merely went to Fort Douglas, and returned immediately.

Mr. Sherwood. Did you see Dr. M'Laughlin after leaving him at Fort William?

Mr. Misani. Yes, I found him also at Rivière aux Morts on my return.

Mr. Sherwood. You, Sir, I believe, in conjunction with another officer, received leave of absence, at the solicitation of the North-West Company, to enable you to go to the

Indian country, to report the actual state of affairs, according to your observation?

Mr. Misani. Myself and Lieutenant Brumby received leave of absence for six months. I know it was in consequence of the application of those gentlemen, and I saw a letter to Sir Gordon Drummond, applying for leave of absence to be granted us.

Mr. Sherwood. Do you recollect seeing Mr. Leith on your route? was he with you at Bas de la Rivière?

Mr. Misani. Yes, I saw Mr. Leith on the 20th June, at Bas de la Rivière.

Mr. Sherwood. Was Mr. M'Leod with you there?

Mr. Misani. Yes, Mr. M'Leod accompanied us there.

Mr. Sherwood. Do you know any thing of a meeting of savages, commonly called a council, and were you and Mr. Brumby present at any such council?

Mr. Misani. I and Mr. Brumby were present at a council held at *Bas de la Rivière* [*Lake la Pluie*]; Mr. M'Leod and Mr. Leith were also present.

Mr. Sherwood. Was any speech made to the Indians; by whom was it made; and what was its purport?

Mr. Misani. Mr. M'Leod made a speech, through the medium of an interpreter, in which he explained to the Indians the violences which had been committed at Red River, and [*at Bas de la Rivière,*] and requested such of them as were willing, to give their assistance, as they were afraid of a repetition, and that they were going to arm in self-defence. [*Mr. M'Leod said that they had received news of Fort Gibraltar being destroyed, and that they would hold a council amongst themselves, to consider what was the best to be done, and the result should be communicated to us. Mr. Leith said afterwards, that they had determined, as they knew that cannon had been planted on the banks of the river to prevent any passage, and that the lives of many hundred people in the interior depended upon the provisions they had above, to arm themselves, and go to fetch those provisions; that they would, if not molested, pass the Settlement singing, and return in the same way; but, if attacked, they were determined to defend themselves. The same was afterwards told to me by Mr. M'Leod.*]

Mr. Sherwood. Do you know that these gentlemen did arm in self-defence?

Mr. Misani. Yes, I know they did.

Mr. Sherwood. Did you understand what was their object in going farther into the interior?

Mr. Misani. I understood it was to carry supplies, and to obtain provisions for their traders and servants.

Mr. Sherwood. Do you know that the North-West Company have many hundred persons in the wilderness depending upon them for their daily nourishment?

Mr. Misani. Yes, I know they have an immense number of persons in their employment through the Indian country.

Mr. Sherwood. You, being well acquainted with their object, did you consider it a justifiable one; and did you, after you knew their apprehensions of being attacked at Fort Douglas, continue willing to accompany them?

Mr. Misani. Yes, I had no objection. I had said I would go, and I saw no reason for changing my mind.

Mr. Sherwood. You, I suppose, had no intention of attacking Fort Douglas?

Mr. Misani. No, I had nothing to do with them.

Mr. Sherwood. But if they had attacked you, you probably would have defended yourself?

Mr. Misani. Yes, most certainly, if attacked, I would have done what I could to defend myself.

HUGH BENNERMAN, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood. Do you know Michael Heden, who has been examined as a witness in this case?

Bennerman. Yes, I know him very well.

Mr. Sherwood. Did you ever have any conversation with him on the subject of the battle of the 19th June, and what did he tell you, and where and when was it?

Bennerman. I saw him in this town of York last summer, and he told me that Mr. Semple's party fired first.

Cross-examined by the ATTORNEY-GENERAL.

Attorney-General. Where did this conversation take place?

Bennerman. It took place at Ashley's, and we then went to Hamilton's, and he said he would go to Mr. M'Kenzie, and tell him the whole truth of the business.

Mrs. WINIFRED M'NOLTY, *sworn.*

Examined by Mr. SHERWOOD.

Mr. Sherwood. Are you acquainted with Michael Heden, the same person who has been about the Court for some days, and how long have you known him?

Mrs. M'Nolty. Yes, I know that Michael Heden, and have known him for upwards of six years.

Mr. Sherwood. Would you, or would you not believe him upon his oath, from all you know of him?

Mrs. M'Nolty. No, from his general character, I would not.

Mr. Sherwood. Have you at any time had any conversation with him relative to the affair of the 19th June; and what did he say to you relative to the conduct of Mr. Semple, and the party that were with him on that occasion?

Mrs. M'Nolty. He told me these words: "We cannot blame the half-breeds, for our side fired first, and if we had gained the day, we should have done the same, or as bad, to them."

Mr. Sherwood. You are quite sure this Mr. Michael Heden told you that? repeat what he said, that the Court may distinctly understand it.

Mrs. M'Nolty. I am quite sure that it was Michael Heden that told me so; he said, "It has been a bad business, God knows, but we cannot blame the half-breeds, for it was our side who fired first at them, and if we had gained the day, we should have served them the same, or have done as bad to them."

CHARGE TO THE JURY,

*By Mr. Justice BOULTON.**Gentlemen of the Jury,*

This is a trial, which must have fastened itself on your minds, I am sure, from the very extraordinary manner in which it has been conducted, and the very extraordinary circumstances that have been brought before you; and I am sorry to say, that the greater part of my duty will be to endeavour to wipe away from your minds, any impression which evidence unconnected with the charge, may have produced. The principal question, indeed the only one for your notice, is, whether this indictment which I hold in my hand, is, or is not, well founded? It is an indictment for murder, charging four persons, as principals, and a number of others, as accessaries, before and after the fact, and thus embracing all the varieties which distinguish the charge of murder. This charge, thus divided, embraces not only different points, but the evidence applies itself to different particulars, and different persons. In that which you have heard, you will find a great deal that does not apply at all, as well as that differs in its application. Before I call your attention to the testimony, it will be necessary to see who you are trying. You have not before you any of the principals, but you have a number of accessaries before and after the fact. By the indictment, I perceive the first character is John Siveright, who is charged as accessary before the fact, to the murder of this unfortunate Major [Mr.] Semple; and there are five after, *viz.* Alexander M'Kenzie, Hugh M'Gillis, John M'Donald, John M'Laughlin, and Simon Fraser; Mr. Siveright is, then, Gentlemen, the only accessary before the fact, and there are six after, for Siveright, I now see, is charged both before and after the fact. The charge against them is that

of murder, in various degrees, by helping one Cuthbert Grant to commit it, or receiving him after he had committed it, knowing he had done so. Having before you the charge and the persons accused, it will be my duty, before we go into the case, to explain to you, as well as I am capable of doing, the Law connected with the right of putting these persons on trial. The Officers of the Crown could not have put them on their trial, against their will, till they had convicted or outlawed some of the principals, as they are called in law ; but the accused themselves, it appears, have the right to insist upon having their trials, and they have chosen to have them ; but although they have chosen to be put upon trial, they can not be liable to judgment, till all the principals are tried or outlawed. If convicted, they must remain in gaol as long as there are any of the persons accused as principals to be tried. I mention this to you, because I wish, as the two principals who have been tried have been acquitted, that, before you return a verdict of guilty, you should be most clearly satisfied of the indictment having been made out against one or other of the principals, as well as against the gentlemen who are before you. I wish to impress this strongly on your minds, because, if afterwards the principals should be tried and acquitted, although these persons are found guilty by you, they must be discharged ; that is, some of them, the accessaries before the fact, because it is only to murder, as charged in the indictment, of malice aforethought, or malice prepense, that there can be accessaries before the fact. There are various species of homicide, and instead of murder, it may, on the trial of principals, turn out to have been in self-defence, or there may be other circumstances which may remove the charge of murder, by shewing there was no malice premeditated. Now to judge whether this was murder, or whether it was in self-defence, that these lives were taken, you must bring your minds, as well as you are able, to recollect the evidence on the part of the Defence, which went to shew that Cuthbert Grant, and the others charged, were not guilty of murder, but that it was in self-defence

that this dreadful slaughter took place. Whether they are guilty of murder, or manslaughter, or nothing at all, it being in self-defence that it happened, it will be for you to say by your verdict. And then you will have to recollect, that it is accessaries only that you are trying, and say how far they are guilty of the indictment. Your memory will, I fear, hardly be able to recollect the testimony of so long a trial, and where it has been so contradictory; for it is right I should tell you, that a great deal of contradictory evidence has been offered on both sides. The prisoners' counsel, with great ingenuity and earnestness, endeavoured to prove that it was not malice prepense that occasioned the death of these unfortunate people, and therefore could not be murder; contending, from a variety of circumstances, that a state of confusion and war existed in that country. This may apply to two or three of them, but it will require great care on your part to distinguish, when you come to the main point of this unhappy affair, *viz.* whether the first fire came from *Major* [Mr.] Semple and his party, or from the other. There is great confusion and difficulty about it, from the very contrary evidence which has been given. First, we have direct evidence that it came from the other party, and that Mr. Holte fell by the first shot, and Mr. Semple by the second; then, on the other hand, we have a string of evidence to the contrary, and they all swear it came from Governor Semple's party. It is the most important thing in criminal trials, to weigh the evidence, because, believing the one side may subject a man to the loss of his life, if in a case of felony; whereas, if credit is given to the other side, the prisoner is acquitted; so that I say the great difficulty in all trials, and particularly in criminal trials, which are so serious, is, which evidence is to be believed when witnesses contradict each other. These observations have taken up a greater share of your time than I intended, but I hope they will be useful to you. I have no hesitation in saying, gentlemen, that if you do not consider the evidence distinct, as the death of this unfortunate gentleman, from malice prepense, you ought not to convict; and if you

think it took place in self-defence on the other side, you ought also to acquit. According then to the evidence, to which we must now look; on the one side, it is said the Bois-brulés, upon seeing Mr. Semple and his party, galloped up and formed a sort of half-circle round these unfortunate people; and one of the half-breed party, who was tried the other day and acquitted, (a circumstance which is of no consequence to this trial,) came out from among them, and rode up towards Mr. Semple, and some conversation passed, which I dare say you will recollect. At last, by some provocation given by this man, Governor Semple caught hold of his bridle, and the butt of his gun, and was going to make him a prisoner, or called to his men to make him so, Boucher slid from his horse on hearing this, and ran away, and immediately guns were fired from the Bois-brulés' party, according to this evidence. If this evidence is believed, if you are satisfied with it, then it is undoubtedly murder. If you are perfectly clear that the Bois-brulés' party fired first, it is unequivocally murder. When I say this, I mean it is so, if you pay no attention to the circumstances which have been adverted to so frequently in the course of the trial by the prisoners' counsel, and relative to which evidence has been given at a very great length. I allude to the animosity said to exist between these two great Companies; for if, on the other hand, you think that the animosity subsisting between these two commercial Companies extended itself to all belonging to them, and rendered the country in such a state of exasperation, that it was impossible for them to meet without coming to violence, it may diminish the homicide; but the excitement which has been shewn is not close enough to be a defence, unless you believe that Governor Semple's party fired first. In the great mass of contrary evidence, I am truly glad that it is with you, and not with me, to decide the difficulty. You, I am sure, will weigh well all that has been said by the witnesses on both sides, as being the only way to arrive at a satisfactory decision, upon this very important trial. If, gentlemen, you find that it is manslaughter that has been

committed, you will then discharge these gentlemen; if, however, you think proper to return a special verdict, it is in your power to do so, and then the circumstances connected with your jurisdiction will be fully considered and decided according to law. This verdict will only be returned in case you see a difficulty on the subject of jurisdiction. If, however, the offence in the principals amounts in your opinion only to manslaughter, then these defendants must be discharged, because there is in law no such thing as accessory to manslaughter.

Solicitor-General. I beg your pardon, my Lord, but after the fact, there can be accessaries to manslaughter as well as murder.

Chief-Justice. We know there can be accessaries after manslaughter; but the charge on the present indictment is that of accessory to principals in murder; and if it is only manslaughter that Grant has committed, they cannot, on this indictment, be accessaries after the fact, because the fact charged is murder, and as to accessaries before the fact, there can be none to manslaughter.

Mr. Justice Boulton. There is, gentlemen, no such thing as accessory to manslaughter upon this indictment, which charges the prisoners with being accessory to murder, and therefore it is no matter what the law is upon the subject. I was only endeavouring to give you as correct an account as I could, of what was the law upon the case that you have to try. I will, in this place, say a word to you relative to the testimony against Mr. M'Leod, as given by Mr. Huerter. His evidence goes this length; that in 1816 he left Montreal in company with Mr. M'Leod, and the other prisoners, to go to the Indian country; that going along, they met the settlers coming from Red River, and got intelligence of the death of Mr. Semple and his people; that upon this, Mr. M'Leod ordered them all to go on shore, which they did; and Mr. M'Leod, being a Magistrate, an examination took place into the circumstances of the transaction, and a number of the survivors were sent to Montreal to give evidence upon the trial of different persons; the party then pursued their way to Red River,

and when arrived there, they made more inquiries, and it appears Mr. M'Leod gave all the people a dram of liquor, and a quantity of clothing to a part of them. It is not possible to suppose that these gentlemen, coming from Montreal, could know any thing of what had happened at Red River, and therefore, if they are guilty at all, it must be from what they did afterwards, for they could not have known, by possibility, of what was going on at Red River, when they were at Montreal; and what they did afterwards is supported by the most slender of all possible testimony, and will probably go for nothing, except as you may think Mr. M'Leod's speech important, as shewing the disposition of the party afterwards. Before I read to you the evidence, or give you an outline of it, I will call your attention to the nature of the jurisdiction under which you are empowered to try offences which, like this, are committed in the Indian territory. Certificates under the Great Seal of the Lower Province, you will recollect, were put in during the trial, as it is only under such an authority that you can have the power, and the whole is brought about under a British Act of Parliament, passed in the 43d year of His present Majesty's reign, which gives power to the Government of Lower Canada to transmit, under the Great Seal of that Province, offences committed in the Indian territories, to any Court of this Province for trial, if it shall appear to him that the ends of justice may be more conveniently attained in Upper than in Lower Canada. Under this solemnity then it is, that you have been empannelled to try these gentlemen; and I will now give you an outline of the evidence, which has been very confused and indistinct, so much so, that I am sure you must have had great difficulty and trouble to have understood it; but I shall endeavour to make it as plain as I can, and I hope you will then understand it better.

The first witness called was Michael Heden, who swears that they had received information that they were to be attacked, and were much alarmed about it. He says that they constantly kept a watch, or look-out, to give notice of any danger that might approach, and that on the 19th

June, about six or seven o'clock in the evening, an alarm was given that the half-breeds were coming, that is, that they were going towards the Settlement belonging to the Earl of Selkirk, situated at the Frog Plains, of which you have heard so much in the trial, at a distance of about two or three miles from the fort. Mr. Semple, the witness says, went to some commanding position of the fort, and with a spy-glass looked at this party, to see who or what they were. Mr. Semple was accompanied by some of his people, and ascertaining that they were an armed body of men, mounted on horseback, he directed about twenty of his people to get their arms and follow him, which they immediately did. They went on, Heden says, for some distance, and saw at first only a few. As they went along, they met some settlers running, and crying, the half-breeds were come with carts and cannon. Shortly after they saw a much larger number of horsemen, and Governor Semple sent back to the fort for a cannon; the person who was sent, having been examined as a witness, I need not detain you, by remarking at present upon his evidence, farther than to remind you that the cannon did not reach the party. They went on, gentlemen, for some little distance farther, when the mounted party suddenly turned back upon Mr. Semple's party, and dividing themselves into two separate divisions, they surrounded them, and completely cut off their retreat. It is now coming nearer every moment, gentlemen, to the very important part of the evidence, and you will of course give particular attention to it. Having formed a sort of circle or half-moon, one Boucher, a man who has been indicted as a principal, but who was acquitted the other day after a long trial, advanced towards Mr. Semple's party, waving his hand, and making signs as if he wanted to speak, and approaching nearer, he called out, "What do you want? what do you want?" Governor Semple replied, "What do *you* want?" to which Boucher answered, "We want our fort," and the Governor said, "Go to your fort." Upon this Boucher made use certainly of very insolent language to the Governor, telling him he was a damned rascal, and had destroyed their fort. Upon

this, Mr. Semple laid hold of the bridle of this man's horse, and of his gun; and almost at the same instant, the report of a gun was heard, and directly after a second report took place; both these shots, this witness positively swears, came from the half-breed party, and that by the one a Mr. Holte was killed, and by the other Mr. Semple was wounded and fell, though not killed, as appears by subsequent testimony. Here, gentlemen, you have arrived at the great and important point of this inquiry, *viz.* who fired first? This man says positively, that the half-breed party fired these two first shots; whilst, on the other hand, the witnesses on the part of the defendants deny it, and bring evidence of a directly contrary description. It appears from all the testimony that has been adduced, that the half-breed party were armed; and it is a matter demanding your most serious consideration to determine correctly, why they were armed, and whether any justifiable reason has been proved for their being so. It forms a most important question for your serious consideration, whether it has been proved that their going armed was a consequence of former attacks having been made upon their persons and their property. You will have also to inquire into the correctness of the reasons assigned for this party going by land, when there was the more ordinary route by water. You will have to weigh very distinctly, whether it was for fear of losing their provisions, or whether it was to avoid being seen in passing the fort, and by that means more certainly effect their object of destroying the Settlement, by taking it unawares, or by surprise; and after you have done this, the other question must be determined, who fired first? There has been a great deal of testimony, gentlemen, relative to the taking of pemican, and that on both sides of the question; with that you have very little to do, except as it may account in some degree for the parties going armed; for you cannot consider it any justification for murder, that you are able to prove the person who was murdered, to have committed a robbery on another person, or even on yourself, unless you prove he was in the very act of robbing you at the moment

you took his life ; and then it is a complete justification, because you are allowed to defend your property at every hazard. I therefore say, gentlemen, though much has been said about taking pemican, it has very little to do with the case. Indeed you will recollect, that it was a question, how far any evidence upon the subject ought to be received. My learned Brothers, however, considered that the circumstances might be evidence to a certain extent, and that it was legal evidence for you. It amounts, however, to nothing more than this at last, that a great deal of bad blood existed between these people, and that they were perpetually annoying each other in every way they could think of ; and amongst others, by the taking of their provisions from one another. You will remember, the witnesses have described this *pemico* [*pemican*] as indispensable to the carrying on of the trade in that country, as it will keep for a long time. It is a sort of food which the witnesses represent to grow upon these *Frog Plains* [*be procured from the plains,*] and very necessary for their support. The evidence is so confused, from the very great variety of circumstances apparently but little connected with the charge to which it refers, that it is very difficult to determine what is important, and what is not ; but you will endeavour to recollect its application as well as you can. But the main point will be for you to try and satisfy yourselves, who fired first. The evidence on the part of the Crown says, that Governor Semple received the first shot, that is to say, his party did, as a Mr. Holte was the first that was killed, from the half-breed party ; and that a second was fired from the same quarter, by which *Major Simcoe* (Mr. Semple) was wounded, before any shot was fired at all from the other party. This fact is sworn to by different witnesses, some more fully than others ; but all unite in saying, either positively or to the best of their belief (and they state circumstances which lead to the belief), that this was the case. On the other hand, without at present referring to particular witnesses, you will recollect that it is sworn, Governor Semple reproached his people for not firing, and that immediately two shots were fired by some of them at Boucher, and that

it was not till after then, that any firing by the half-breeds took place. Here then, gentlemen, you are placed in a very difficult situation, and ought to use great caution in examining the evidence, as when a little malice exists in the mind of a witness, it is difficult to say to what lengths it may lead him; and in the present instance both cannot be correct. If, gentlemen, you shall, upon investigation, be of opinion that it is proved that the firing commenced on the side of Mr. Semple, then there is a most complete defence, because, although neither party had any right to go about armed in this manner, yet is very natural that, when they met with arms in their hands, from the state of mind in which unfortunately it is proved they were, they should come to blows; and if one party fired upon the other, then that which was fired upon would be excusable and justified in using their arms. Both sides swear, and that most positively, that they received the first fire, and that it was not till after a second shot even had been fired at them, that they returned it, and that then the firing became general. I repeat it to you, gentlemen, that I rejoice sincerely that it is you that are to determine, and by your verdict to say who, in your judgments, have spoken the truth. To assist you, by refreshing your memories as to what each have sworn, I shall now proceed with the evidence; and in proportion as it is tedious to hear, I shall endeavour to point out to your particular attention, parts that might otherwise escape your notice, and which really are material. We had got to that part of this melancholy transaction in which the firing became general, the fatal result of which was, that the greater proportion of Mr. Semple's party were killed. I shall just mention the heads of evidence, and not trouble you by reading the whole. The battle being over, nothing else particular occurred that day, according to Heden's testimony. Next day the dead body of Mr. Semple and others were brought to the fort. Mr. Semple, wounded in the left breast, but could not tell whether by musket shot or not, because the body was all over spear wounds. On this day, Grant and others came to the fort, and ordered them away,

and they prepared to go, and actually went away on the 23d. They went away in boats; he knows three or four escaped besides himself, but cannot say how Mr. Pritchard got off. We now go on to the 23d, when the party went away altogether from Fort Douglas, being guarded as far as the Frog Plains by Boucher; at daylight, on the 24th, they meet a party in nine or ten canoes, headed by Mr. M'Leod, and were made to go on shore, after some inquiries for Mr. Semple and Mr. Robertson, who were not there, and for Mr. Pritchard, who you recollect was there, and gave them the history of the melancholy business. He recognises Mr. M'Leod as being there; also Mr. M'Kenzie, whom he distinguishes by the title of Emperor; he speaks also to Dr. M'Laughlin; he saw Siveright there the next day; he speaks also to Mr. M'Donald's being there, but not to Simon Fraser, or Mr. M'Gillis: he mentions other persons who were there, but as they are not before you, it is of no consequence to notice who they were. Some of the half-breed party came to Netley Creek while they were there—came from Fort Douglas—some of those who had been in the battle of the 19th June; and the witness says, though he does not know of any presents being made to them, he does know that rum and tobacco were served out to them. He concludes by saying he was sent a prisoner to Fort William, and thence to Montreal. Upon his cross-examination, he says he made a deposition like what he has made here, that is, the same facts. I remark here to you, gentlemen, that, though very improperly, yet it appears, affidavits made before magistrates have been printed. It is a very unwarrantable action, and ought to be deeply censured. Witness continues, that he does not know where this party with Mr. M'Leod came from; is sure he saw Mr. M'Laughlin and Mr. M'Donald at Netley Creek, and that rum and tobacco were given to the people who came from Fort Douglas, and, he adds, who had been in the battle of the 19th of June. To an inquiry put in reference to each of the defendants, he answers, that he did not see any thing like committing a murder, or helping to commit it. He is here questioned as to how they

were surrounded, and he describes it to be in the shape of a half-moon, but that their retreat to the fort was not cut off completely. In this particular, you will recollect he contradicts himself, as he swore, in his examination in chief, the reverse. He is then examined as to who fired first, and maintains that the half-breeds did; that they fired two shots before his party fired any; and asserts, that this is the account that is true, and is the one that he has invariably told. In this he is, you will recollect, contradicted by the woman who was examined, and by another witness, who swear that at different times he has told them that Mr. Semple's people fired first, and deserved all they got; but he swears he never told any body so; he has heard that one man was killed on the Bois-brulés' side. The next witness is one who went to Qui Appelle with Pambrun, was taken prisoner by Cuthbert Grant; while a prisoner, heard of an expedition against Governor Semple; did not hear a speech made by Mr. Alexander Macdonell to the half-breeds and Indians at Qui Appelle, or in going down; a part of the half-breeds went to Brandon House; heard the half-breeds frequently talk of their intention to destroy the Settlement, and the fort at Red River. When he got to Fort Douglas, heard it rumoured there that they were to be attacked, and told them what he knew; goes on to the 19th June, and gives nearly the same account as Heden, with whom he made his escape across the river in an old bateau. He states about their all going away, and recognises at Netley Creek, Mr. M'Kenzie, and also Mr. M'Laughlin, but not the others. Saw the half-breeds arrive from Fort Douglas, and that they were well received; but did not see Grant among them, or Morain. Saw Morain afterwards at Point au Foudre; saw nothing on part of prisoners like giving countenance to murder. He also swears, that the half-breed party, in surrounding them, got between them and the fort, completely cutting off their retreat. There is nothing more in this testimony worth your notice. Mr. Bourke is the next witness; he swears he was storekeeper to this colony, and gives nearly the same account of the beginning of the business as before; that he was sent for

a cannon by Mr. Semple, went back for it, and did not again join the party; don't know therefore about the fight. In going back he got fired at by some people in bushes, and was wounded, but got back to the fort; had sent the cannon back before, so that it never reached Mr. Semple. Another man who was with him was killed while trying to get away. He also saw Mr. Semple's dead body at the fort the next day, and proves that they were all sent away. Gives the same account of meeting Mr. M'Leod's party, and going to Netley Creek. He also gives an account of a conversation between Mr. M'Gillis and Alexander Macdonell, relative to taking the fort; this no doubt you remember, the one being for attacking it at once, and the other for forcing it to surrender from want of provisions. From there, witness states he was sent to Fort William, kept there some time, and then sent to Montreal. Mr. Miles Macdonell proved that the regulations he thought it right to introduce in that country, were directed equally against both parties, that is to say, it was a general order to prevent provisions being taken out of the district; but I do not think there is any thing important in Mr. Macdonell's testimony. He speaks to aggressions committed against their party, but they need not be taken into your notice, as they cannot justify additional outrage. Hugh M'Lean gives the same sort of testimony as the two first witnesses, except that he was not at the battle; he was the man who drove the cannon, and went back with it to the fort. Mr. Pritchard gives a very particular account of every thing that occurred; he heard the conversation between Boucher and the unfortunate Mr. Semple, saw him lay hold of the bridle and gun of Boucher, who slid off his horse, and ran some distance before he stopped, but Mr. Pritchard does not say who fired first. He saw Mr. Holte struggling on the ground, and then tried to save himself; all was in great confusion, and the firing was general; shortly after he saw none of his people, but one gentleman left standing, and they threw down their arms, and proposed to give themselves up. One was killed upon

the spot, and with great difficulty, through the prayers of a Canadian belonging to their party, the witness, Mr. Pritchard, escaped with his life. He negotiated the terms upon which they were to go away, and some time after they all went away. He had to go several times backwards and forwards to the Frog Plains, and on one occasion owed his life to Boucher, who saved him from some who attacked him; he describes fully his meeting with Mr. M'Leod's party, and besides M'Leod, he recognises Mr. M'Kenzie, and he believes Mr. M'Gillis, but is not sure as to him; he knows of the arrival of some of the half-breeds from Fort Douglass, but nothing of their reception, as he was a prisoner. Some letters are proved by Mr. Pritchard to have been the writing of Mr. Semple, and they were put in and read during his cross-examination. Patrick Corcoran was next sworn; he was one of the party who went to Qui Appelle with Mr. Pambrun, who was also examined. A great deal was said by these witnesses about some harangues or speeches, and about the Indians being painted, and giving the war-whoop, but it is all contradicted by the witnesses for the Defence; it is therefore not necessary to puzzle you with repeating it; you cannot but recollect it. This forms the principal evidence for the prosecution. On the part of the prisoners, a great deal of testimony has been given in the beginning to shew the aggressions committed by the taking of this food, the pemican, from them, also the taking and destruction of forts. Evidence is also brought, and a great deal of it too, and by a great many witnesses, to shew that they had no intention whatever to molest or disturb this Settlement. That they merely wanted to take their provisions in safety, and their going armed was a measure rendered necessary by the fear they had of being attacked. They prove the river to have been, in some degree, blocked up against them, and that they were compelled to go by land. In support of their peaceable disposition, they prove the orders given, and that they obeyed them, going as far as a large swamp would allow them to do, from the fort, wish-

ing to pass *it unobserved [them unmolested]*. They say they thought they had done so, till, as they approached the Frog Plains, they saw they were followed by Mr. Semple and his party. That they then stopped, and got Boucher the Canadian, who spoke a little English, to go and ask what they wanted. The conversation that ensued, you cannot have forgotten, as you have heard it so often. Boucher was examined before you ; he told nearly the same story as the other witnesses ; he did not admit the insolent language, to be sure, but upon hearing a shot whiz by his ear, which he says was the second that had been fired from Governor Semple's party, he got off his horse, and ran away some distance, and that then the firing became general, and lasted for a quarter of an hour. During that time you will recollect that Boucher was lying on his belly in the grass ; making observations, as I suppose. On the subject of the party that was going with M'Leod and these gentlemen, a great deal of evidence was given. It was admitted that letters had been written to *Coteau du Lac* [*Fond du Lac*] to raise the Indians, but it was only to go up with them in case they should be attacked, or rather, by taking a strong force with them, to induce the people at the fort not to carry into effect what it was understood they intended to do, *viz.* prevent them going up past the fort to the posts the North-West Company had beyond Red River. In short, the evidence for the Defence is, that they only wanted to trade ; that for their trade this meat, called pemican, which abounded on these Frog Plains, was necessary, and that they wished to secure a supply for their traders. I am afraid I have been tedious, but I hope you now understand the case better. Here then ends, gentlemen, the evidence on the part of the defence, as well as the prosecution. It has taken up a great deal of time, but you now have the whole case before you.

The first question for you to consider will be, has a murder actually been committed at all ? You are sure that a life has been lost, but although you have that certainty, yet it does not necessarily follow that it was a murder

because there was a life lost. There are a variety of degrees of homicide, and to decide to which of them this transaction belongs, is your province. The destruction of a fellow-creature from malice prepense is murder; the taking away life in defence of one's self, or one's property, is justifiable homicide; and if death ensues in a quarrel or passion, it is manslaughter. To which of these three degrees any particular case belongs, it is the province of the Jury, who try the case, to determine. If in this case you think it was from malice, intentionally with a design to kill, that these people went up to Governor *Pemico's* [Semple's] party, then the charge is made out against the principals, and places you in a situation to consider the guilt or innocence of the accessaries. If, however, you are of opinion that it was in defence of themselves they fired, and after the party with Governor Semple had fired upon them, then a complete justification is made out for the principals, and of course you know there can be no accessaries guilty. But, I fear, gentlemen, you will not, were you even to take the testimony on the one side only, find such a case as that made out. I am afraid there is no proof of that kind, were you, as I say, (which nevertheless you must not do, for you must weigh the evidence on both sides, and judge impartially between the two,) to rest upon the testimony on one side only. It then remains to inquire whether you can, with propriety, consider it manslaughter? In this part of the inquiry, you will remember that these two parties belonged to two trading companies, both of great importance, and both employing a great number of servants, who are engaged in constant broils and quarrels with each other, proceeding to acts of violence whenever they met, and that, in this temper of mind, they saw each other on the 19th June, and immediately the unfortunate engagement took place. This battle did not result from the passion of the moment, there is no testimony of that nature, and the law, in a hundred instances, considers the killing a man, though provocation may have been given, to be murder. So, in this instance, notwithstanding all the evidence which had for its object to prove the

existence of that passion, which would reduce the killing to manslaughter, I fear you will not find it. Therefore, if you acquit these persons, it must be on the ground that you do not believe they fired first, or that, from the conduct of Mr. Semple and his party, they were justified to do so; and in either case these gentlemen are acquitted. Indeed, whichever way you look at the case against most of these gentlemen, there is, apparently, nothing that can be called evidence to prove them guilty. Some are not even sworn to as being there at all, that is, at any of the places, and others appear to have taken no step at all in the business. Indeed, if you believe all that has been said on the side of the Brûlés, the countenance given by any cannot be considered as wrong. If you believe they went to carry provisions, that they could not go by water for the reasons stated, that on setting off they received orders to pass at as great a distance from the fort as possible; and lastly, if you believe the reason that they did pass, and the reason they went at no greater distance was because of the morass; these, taken in connection with the fact, that Mr. Semple and his party did go after them; and if you also believe that the Hudson's Bay party fired upon the half-breeds, then nobody that is accused is guilty. But the evidence is so contradictory, that it is hard to say which to believe; and the circumstances which each party, by its witnesses, represent, are so different, that you will have very great difficulty. But you must decide whether it is murder or manslaughter, or whether it was in self-defence that these lives were lost. If manslaughter, then, gentlemen, there is an end to the whole affair; all must be acquitted. If actual murder on the part of Grant, or the other, then you will say whether these gentlemen have been proved to be accessaries. I believe I have stated to you every thing that is any way important in the evidence, and all that is necessary on the question of law. I have not done it very professionally, because I was afraid, if I did, instead of assisting your judgment, which was my object, I might only confuse and puzzle you; but you now know as much of the law as is calculated to help you.

without distracting your attention in considering the question which must first be decided. Has murder, has manslaughter, has self-defence been committed, that is, has it been in self-defence that the lives of this unfortunate Mr. Semple and his companions have been taken? The question must puzzle you to decide. If you are satisfied there was no malice in Grant and Morain, then they cannot be guilty, nor can the accessories. If you believe, from the accounts given of their conduct, that it was murder in those charged as principals, you are then to inquire whether these are accessories, or any of them? Excepting against Mr. M'Leod, I do not think there is any evidence that can be considered as shewing that countenance was given in any way to the half-breeds. Against him you must judge what weight the evidence ought to receive, and how far it should be considered as proof of approbation and protection to those who committed the murders. (*It was here intimated from the Bar, that Mr. M'Leod was not before the Court, nor included in the indictment, upon which Mr. Justice Boulton continued his Charge.*) Gentlemen, I was going to have said, that there was not a scrape or scintilla of evidence, except against Mr. M'Leod, and that against him you would judge of its weight*. I had thought that

* Without recapitulating all the evidence produced on the part of the prosecution, which leads to an opposite conclusion, the reader is requested to advert to the proof respecting one act of aiding and abetting, (in pages 79 and 89,) where it appears that a council composed of about sixty persons, the half-breeds and others who had killed Governor Semple, was assembled at Fort Douglas, a speech was made to them by Archibald Norman M'Leod, who thanked them for what they had done, and delivered *habillements* to them out of the stores of the North-West Company, which *habillements* are, in page 91, explained to have been presents, and not the regular equipments, or usual supply of clothes to the servants of the Company. Cuthbert Grant, the person charged as principal in perpetrating the murder, assisted in making the division of the clothes. It is further proved (in page 73, et seq.) that M'Kenzie, M'Gillis, M'Laughlin, and M'Donald were present at this council, and that they had at this time a full knowledge of the affair of the 19th June. From the time of their arrival at Fort Douglas they were in the habit of dining at the same table with persons who had been engaged in it, and the transactions of that day

Mr. M'Leod was one of the defendants before you, but I find he is not. Against the others then there is not a scrape, not a scintilla of evidence, not of any thing before the fact; and after the fact, only the giving of the usual supply of clothes to their servants. You will, therefore, consider of your verdict.

The Jury then retired, and in about three quarters of an hour returned into Court, and delivered, by their Foreman, a verdict of NOT GUILTY; which being recorded by the Court, the Jury were discharged.

were the constant topic of conversation, at the recital of which they had testified their gratification.

The fact then as proved amounts to this:—M'Leod, the senior partner, in the name of the North-West Company and of the prisoners his partners, returns thanks to Cuthbert Grant and his associates, for their services in destroying Governor Semple and his party, and he distributes rewards to them out of the property of the Company. The prisoners are present when these sentiments are expressed in their name: they are present when their own property is distributed as the reward of murder, and yet these persons are not considered responsible for this use of their name, and this appropriation of their property. The learned Judge seems to think that M'Leod, as the spokesman, may possibly be implicated; but because the others did not repeat the same words after him, he cannot find a "*scintilla*" of evidence against them, though their whole conduct exhibits a continued concurrence in the proceedings of their leader.

The learned Judge assumes it as proved, that the clothing distributed by M'Leod in the presence of the prisoners, was nothing more than the ordinary allowance of clothing, due to the servants of the North-West Company. Though the Attorney-General did not bring forward all the evidence by which he might have proved the contrary, yet the evidence even as it stands, does not warrant such a conclusion. Pambrun's evidence (page 79,) is distinct and pointed, as to this clothing being a present, especially given on account of the 19th of June. Huertter's (in page 89,) is to the same effect; and is corroborated by the tenor of M'Leod's speech, in which the gift of this clothing is immediately connected with the thanks which he gives to the half-breeds for their assistance. The evidence of Mr. M'Gillivray and others to the contrary is not direct, and does not in fact contradict that of Huertter and Pambrun. They say that the servants of the North-West Company regularly receive equipments, but they do not say that the *habillements* delivered to the half-breeds, by Mr. M'Leod's orders, were not a gift independent of their regular allowance. At all events the learned Judge was not entitled to set aside the other evidence, as meriting no attention from the Jury.

TRIAL

OF

PAUL BROWN FOR ROBBERY.

x x

*At a Court of Oyer and Terminer, held at
York, in the Home District of Upper Canada,
on Thursday, the 29th October, 1818;*

PRESENT,

The Hon. Mr. JUSTICE CAMPBELL, presiding,
WILLIAM ALLAN, Esq., Justice of the Peace, Associate
Judge.

PAUL BROWN was arraigned on an Indictment for robbing Michael Heden of a blanket and a gun.

The Instrument under the Great Seal of Lower Canada, transferring this case for trial to Upper Canada, was read.

The Jurors were sworn, none being challenged on the part of the Crown, but many on behalf of the prisoner.

The Solicitor-General briefly stated to the Jury the nature of the crime with which the prisoner stood charged, and reminded them, that though the punishment in case of conviction would be capital, they had a duty to perform according to the oaths they had taken.

The Attorney and Solicitor-General acted as counsel for the prosecution, and Mr. Sherwood as counsel for the defence.

MICHAEL HEDEN, *sworn.*

Examined by the ATTORNEY-GENERAL.

Heden. I was at Red River in June 1816. I know the prisoner. On the 21st June, Paul Brown came into my tent between six and seven o'clock in the morning, presented a pistol to my breast, and told me, in the Cree tongue, he would never leave the tent till he had shot me. He was prevented from killing me by an Indian woman, who was in the tent. He then went out, spoke to his comrades, came in a second time and renewed his threats. A half Indian, named La Fontaine, took the pistol from him, and prevented him from killing me. Brown then took from me

my blanket and gun, and went away with them. The blanket was worth about twenty shillings, and the gun was worth about thirty-five shillings. I was in fear of my life, and could make no resistance. Fort Douglas is on the banks of Red River, about a mile from the Forks, where the Red and Ossiniboine Rivers meet. The fort was then in possession of the half-breeds. I heard that country called Rupert's Land, or Hudson's Bay Territory. I do not know whether it be a part of Upper or Lower Canada. When Brown was in my tent, Donald M'Kay was in the next tent. Afterwards at Fort William I pointed out, to Patrick Corcoran and to Mr. Bourke, this Paul Brown, now at the bar, as the person who had taken my blanket and gun.

Cross-examined by Mr. SHERWOOD.

Heden. I was engaged to serve the Hudson's Bay Company, not to fight. I paid no attention in particular to the prisoner till he threatened to take my life. (*The witness was desired to repeat in Cree the exact expressions used by Brown in threatening his life, which he did*). I did not see Brown in the battle. I am still in the service of the Hudson's Bay Company. I made an affidavit of the circumstances at Montreal, before Messrs. M'Cord and Mondelet, Justices of the Peace, but I don't know if the affidavit was printed or not.

Among other expressions addressed to this witness, Mr. Sherwood said; You come here as a witness in your own cause, to hang the prisoner if you can.

DONALD M'KAY, sworn.

Examined by the ATTORNEY-GENERAL.

M'Kay. I was engaged for the Hudson's Bay Company, but I was not engaged to fight. I saw Paul Brown going into Heden's tent between eight and seven o'clock in the morning. I can't read much. I heard Brown inquire for Heden, and say he would kill him. I did not see that Brown had a gun. He might have had a pistol,

or a spear, without my seeing them. Boucher himself was also at Fort Douglas that morning. It was the 21st June. I know it, because it was the second day after the battle, which took place the 19th. I heard a noise made by Brown in Heden's tent.

LOUIS NOLIN, *sworn.*

Examined by the ATTORNEY-GENERAL.

Nolin. I don't know whether Paul Brown speaks the Cree language, or the Saulteux. Heden and his wife speak Indian (Cree) a little. I knew them at Red River Settlement.

MILES MACDONELL, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Macdonell. I consider Red River Settlement to be in the Indian territory, or Hudson's Bay territory. I certainly think it is neither in Lower nor in Upper Canada.

DEFENCE.

ANTOINE LA POINTE, *sworn.*

Examined by Mr. SHERWOOD.

Antoine La Pointe. I was not at the fort, but at the Portage de la Prairie, when the battle of the 19th June took place. I arrived at the fort four days after the battle. Caribou told me that he had taken Heden's blanket from him. I never heard Heden speak about it. I only heard of it from the 'other' Bois-brulés. Caribou resembles Brown a little. He is about the same size. I have heard that Paul Brown was brought up in Lower Canada. During eight years, I have seen Brown once or twice a year.

FRANÇOIS FIRMIN BOUCHER, *sworn.*

Examined by Mr. SHERWOOD.

Boucher. I do not understand English well. I have heard Heden say, that Paul Brown had taken his blanket and

gun. I don't know that it is true. I know the man who took it. Caribou brought the blanket and gun, and said, that he had taken them from the blacksmith. I knew Caribou before the battle, when he had no gun, nor blanket, and I saw him afterwards, with a blanket and gun, which he said, he had taken from the blacksmith*. I knew Brown at that time, but did not hear of his being accused of having taken the blanket and gun. Brown and Caribou resemble each other a little, but Caribou is thinner, more slender than Brown. In the morning, Paul Brown was at the Frog Plain. It is about nine miles from the fort by water. I don't know the distance by land. I was with Brown the evening before, at the Frog Plain, and about ten o'clock next morning, Caribou arrived with the blanket and gun. Caribou was dressed like Brown, but I did not pay much attention to their dress. I do not understand Cree, and very little of any Indian language. Paul Brown speaks French, and I have heard him speak Saulteux. I was four years in the service of the North-West Company. Confidence was reposed in Brown by his employers. He was sent from the Indian territory to Lower Canada, a boy, and returned a man. I was during twenty-six months, a prisoner in gaol with Brown.

CHARLES BELLEGARDE, *sworn.*

Examined by Mr. SHERWOOD.

Bellegarde. I saw Brown the second day after the battle, at the Frog Plains, as late as eight o'clock in the morning. It is two leagues by water from the fort to the Frog Plain. I certainly saw Brown there the first and second day after the battle.

Cross-examined by the ATTORNEY-GENERAL.

Bellegarde. I was at the Frog Plain myself, and therefore,

* Two days after giving this evidence, the witness Boucher was examined in the Defence of Siveright and others, for the murder of Mr. Semple, when he swore that "no injury whatever" was done to the settlers after they were in the power of his party. (See p. 293).

I recollect that Brown was there at seven or eight in the morning. He might ride to the fort in half an hour. He had not a horse.

MRS. M'NOLTY, *sworn*.*.

Examined by Mr. SHERWOOD.

Mrs. M'Nolty. My husband is not in the service of the Hudson's Bay, nor of the North-West Company, nor dependent upon either of them. I was near Fort Douglas the day of the battle. I cannot say, that I saw Heden go out with the Governor. I saw him some time before. (*Being asked, if Heden was worthy of credit, she said,*) I will tell the truth about Heden. I was at Pambina once with Heden, and I was told in truth by many people, that Michael Heden had accused me and my husband of taking several things, and when I asked Heden about it, he protested that he had never accused us, saying, he would take his Bible oath that he had not said it was us. For that reason, I would not believe Heden on his oath. From my heart, I would not believe him on his oath. I have known Heden six years ago. I don't believe I ever saw Brown. I believe I have seen Boucher. I don't remember whether I saw Boucher the day or two days after the battle.

JOHN M'DONALD, *commonly called LE BORGNE, a partner of the North-West Company, sworn.*

Examined by Mr. SHERWOOD.

Mr. M'Donald. I have seen, but am not personally acquainted with Heden. I would not believe Heden on his oath, because I was told by a gentleman named Heron from Ireland, who said that he had known Heden in that country, that Heden is not a good character†.

* As this witness and the next are brought to say, that they would disbelieve the oath of Heden, the reader is referred to the note at page 156, for the respectable evidence, in the possession of the Attorney-General, by which his credit might have been supported.

† The "gentleman named Heron," here alluded to, was a clerk in the

TOUSSAINT VAUDRIE, *an Interpreter of the North-West Company, sworn.*

Examined by Mr. SHERWOOD.

Vaudrie. I speak the Cree language. I know Paul Brown from having seen him upwards of a year. I have spoken to him in Cree, but he said he could not comprehend what I said. It was yesterday I spoke to him in Cree. I asked if he regretted that his fellow-prisoner, Boucher, had left him on being liberated. I have no reason to know that Brown understands the Cree tongue. I believe he does not*.

The Honourable WILLIAM M'GILLIVRAY, *in his place, sworn.*

Examined by Mr. SHERWOOD.

Mr. M'Gillivray. Brown was some years past in the service of the North-West Company, of which I am at the head. He has always been represented as a good character. I never knew an instance to the contrary. The Cree language is not usually spoken about the Forks of Red River. Previous to the 21st June, 1816, Brown had been till within two or three years in the Nipigon country, and Saulteux is the language spoken there†.

service of the Hudson's Bay Company. In the early part of the spring 1815, he betrayed his trust, deserted the service of his employers, and joined this John M'Donald, taking with him as many of his countrymen, the inferior servants under his charge, as he could seduce to imitate his example.

* It is notorious to those who know this Vaudrie well, that his knowledge of the Cree tongue is extremely limited. It is evident from his own statement, that he addressed Brown in Cree the day before the trial, for the purpose of being enabled to give evidence on this occasion. If, as he states, he had known Brown for upwards of a year, why did he, on the day before the trial, address him in a language which he swears that he believes Brown did not understand? The fact is that Brown speaks the Cree very fluently, having wintered for a series of years in the Nipigon country lying at a considerable distance to the North of Lake Superior, among the Maskagon Indians whose language is a dialect of the Cree.

† The question was not asked of Mr. M'Gillivray if he had ever been in the Nipigon country, else it would have appeared that he never was.

JOHN M'DONALD, a Partner of the North-West Company, sworn.

Examined by Mr. SHERWOOD.

Mr. M'Donald. Paul Brown usually wintered in the Nipigon. After leaving the Nipigon department he wintered at Manitoba. I understand Cree a little, and I think Brown cannot speak so much Cree as Heden attributes to him, which I have heard. I have known Brown thirteen years. He is a sober, quiet, honest man. No Cree is spoken where he used to winter*.

JOHN M'LAUGHLIN, a Partner of the North-West Company, sworn.

Examined by Mr. SHERWOOD.

Mr. M'Laughlin. I have known Brown ten or twelve years. He used to winter at Nipigon, where the Cree is not usually spoken. I understand Cree. The prisoner at the bar does not, to my knowledge, speak Cree; I never heard him speak it, though I have long known him. His character is good. I never heard it called in question. He scarcely speaks any Indian at all†.

CHARGE TO THE JURY.

By Judge CAMPBELL.

The learned Judge stated, that the country where the crime they were trying was committed was the Indian

* This M'Donald never was in the Nipigon country, else he would have known that the contrary of his statement is the fact.

† This witness, except once or twice at Lac la Pluie and at Fort William, at both of which places Saulteux is the language of the natives, always wintered in the Nipigon country among the Maskagons, whose common tongue is a dialect of the Cree. It was from living several years among them alone that he acquired his own knowledge of the Cree. It was truly disgusting to those who were acquainted with these facts, to hear such testimony delivered under the sanctity of an oath; and it was still more disgusting to see interested witnesses, like the three last, permitted to retire without a rigid cross-examination.

territories; that the trial had been transferred to Upper Canada from Lower Canada, by an Instrument under the Great Seal of that province, agreeably to an Act of the Imperial Parliament of the 43rd Geo. III. That the crime charged was a robbery. That if proved it was a capital offence, but that capital, or not ought to have no influence on the minds of the Jury. That they must be guided by the evidence only. That to yield to any other influence, would be highly criminal either in a Court or in a Jury, betraying the best interests of the community. That the person who had been robbed was the first witness, and was in law perfectly competent to give evidence. That it was for the Jury to judge of his credibility. That it must be proved, either that the prisoner was elsewhere at the time the robbery was said to have been committed, or that the witness Heden was unworthy of credit. That if the witness understood the language used to be a threat, it was quite sufficient without his being supposed to know exactly all the words spoken. He concluded by recapitulating the testimony of each witness in order, and exhorting the Jury to allow nothing, which they might have heard before the trial, to bias their decision for or against the prisoner.

The Jury retired and after deliberating two hours, returned a verdict of NOT GUILTY. The prisoner was afterwards discharged, the Attorney-General having entered a *noli prosequi* in his favour on another indictment, which had been found against him for a robbery committed in 1806, stating as his reason for entering this *noli prosequi*, that though the instrument under the Great Seal of Lower Canada, under which he had been tried, purported to transfer Brown's case to Upper Canada for trial of all offences hitherto committed by him in the Indian countries, that particular crime was not among those specifically mentioned in the said Sealed Instrument.

T R I A L

OF

**JOHN COOPER AND HUGH BENNERMAN,
FOR STEALING IN A DWELLING HOUSE.**



*At a Court of Oyer and Terminer, held at
York, in the Home District of Upper Canada,
on Tuesday, the 3rd November, 1818,*

PRESENT,

HIS LORDSHIP CHIEF-JUSTICE POWELL,
THE HON. MR. JUSTICE BOULTON.

THE TRIAL OF

JOHN COOPER and HUGH BENNERMAN.

The prisoners being put to the bar, and arraigned upon an Indictment against them and others, for stealing cannon in a dwelling house of the Earl of Selkirk, at Red River, on the 3rd of April, 1815, they severally pleaded *Not Guilty*; and after various challenges on the part of the prisoners, the following gentlemen were sworn as a Jury:—

| | |
|-------------------|--------------------------|
| **George Bond, | **John M'Dougall, junior |
| *Joseph Harrison | *William Moore |
| *William Harrison | **Alexander Montgomery |
| *Joseph Shepherd | **Peter Whitney, |
| *Peter Lawrence | *Jonathan Hale |
| **Joshua Leech | **Michael Whitmore. |

The Solicitor-General stated the tenor of the Indictment.

The Attorney-General observed that the Indictment contained a second set of counts, leaving out the capital part of the charge, and limiting the accusation to the robbery, that the value of the articles was immaterial, provided it exceeded 40s. If any reference should be made to scenes which had unfortunately occurred in the country

* These were Jurors on the trial of Brown and Boucher, as Principals, or on that of the Accessories to the murder of Mr. Semple.

** These were Jurors on the trials of Brown and Boucher, and also on that of the Accessories.

where these articles are charged to have been taken, it would be of little advantage to the prisoners; for it must strike every reasonable man as being the more necessary that the law should be rigidly executed upon offences committed in a country where, in addition to its actual difficulties, outrage had attained such a daring height, that it was necessary to resort to the protection of what the indictment charges to have been stolen. The branches of inquiry which will present themselves to the Jury, were, Whether the place charged in the indictment was within their jurisdiction? Whether the property charged to have been stolen belonged to the Earl of Selkirk? Whether the nine pieces of cannon, or any of them, were actually stolen, and if they found that they were, whether they amounted in value to more than 40s., and were stolen out of a dwelling house of the Earl of Selkirk? It would only then remain to say, whether the felony were brought home to John Cooper and Hugh Bennerman, by the evidence. Having taken the liberty of placing before them these prominent points which would require their consideration, it was only a very brief outline of the case that it would be necessary to trouble them with. The robbery charged in the indictment was committed at Red River, in the Indian country, where the Earl of Selkirk was establishing a Settlement, and had a variety of houses of different descriptions, and in one of these, it would be proved to the Jury that nine pieces of cannon had, for a considerable time, lain useless; indeed that it had been in April, when they were lying frozen up in a sort of out-building, that a large party of persons, among whom were the prisoners, had come, and by force taken them away, removing them to a fort at some distance belonging to the North-West Company. That this was the case he had to prove, and if he succeeded in proving it against the prisoners, they must be found guilty, as all aiding and abetting are, in the eye of the law, equally guilty, though perhaps not morally so, as in this case it may perhaps appear that some who stirred up this proceeding, and induced a number of ignorant

persons to commit this depredation, are morally more culpable, yet, legally, all are considered equally guilty.

H

JOHN P. BOURKE, *sworn.*

Examined by the ATTORNEY-GENERAL.

Mr. Bourke. In the spring of the year 1815, I resided at Red River, in the capacity of a storekeeper to the colony established by Lord Selkirk. At that time my Lord Selkirk had a number of pieces of cannon there. There were nine pieces altogether. Some were brass and some iron, four of them were brass, and were three-pounders, that is, two of them were, and two were swivels. Two of them were field-pieces and two were swivels; there were also four iron swivels and a howitzer. There were only two brass field-pieces and two brass swivels, there were also four metal, or iron swivels, and a howitzer; nine pieces altogether. They were in my charge, and given to me in charge as the property of the Earl of Selkirk. They were in the store when I received them in charge, and I received them from Mr. Macdonell, or Mr. Archibald M'Donald, that is, I received the keys of the stores from one of them, but I cannot exactly recollect which. Mr. Archibald M'Donald was under Mr. Miles Macdonell.

Attorney-General. What, Sir, might they be worth, at a very moderate calculation? What do you think was their value?

Mr. Bourke. Indeed I cannot say, but they must be very valuable. I do not know the value of such things.

Attorney-General. It is unnecessary to fix a precise value; do you think they were worth ten pounds each?

Mr. Bourke. They must certainly be worth that, and the brass ones a great deal more, as I should think. They were generally kept in one of the men's houses. By men's houses, I mean houses where the men lived, but the property of the Earl of Selkirk. One was kept on a block outside of the houses, the others in the men's room, of a house belonging to the Earl of Selkirk. On the 3d of April,

1815, I thought the men collected in unusual numbers to get provisions, and was surprised at observing that most of them had sticks in their hands.

Attorney-General. Were the men accustomed to get provisions from the store in this way?

Mr. Bourke. They were accustomed to get provisions from the store, but not to come with sticks for them. It was on the 3d of April, between ten and twelve in the morning, when I saw them assemble in such numbers; I was afraid they meant to break open the store, and I therefore determined only to take them into the store one at a time.

Attorney-General. Was there any particular time, or limited period, by which their provisions were to be served out?

Mr. Bourke. There was not. I usually began as early as convenient, and it was generally about this time of day. About twelve o'clock, or between twelve and one, as I was looking out to call some into the store, I saw they had got the cannon on a sledge. I immediately locked the store door, and went and took hold of the cannon, or one of them, to remove it from the sledge, but was prevented by the settlers, who took hold of me, and ordered me to let it go. I then tried to get into the great house, where Mr. Archibald M'Donald and some others were, but was prevented by the people with their sticks and clubs. I then tried to get into the store, where I had been serving out the provisions, and whence I could get to the room where Mr. Archibald M'Donald was, but I was again prevented by them, and among others particularly by Hector Gunn, who had a gun, till they got off with the cannon. Then I was let go in by them, and I found they had taken all the pieces of ordnance that were there. The two prisoners were there. I know both of them very well, and they were there. I cannot say that I saw them actually take hold of the cannon with their hands, but they were there, and went away with the party which took them away to the North-West fort, in the neighbourhood of the place they were taken from.

Attorney-General. Did you see the prisoners at the bar before and after the robbery, and did you ever see the cannon after they had been taken away in the manner you have described?

Mr. Bourke. I did see them, both before and after the robbery. The cannon were taken up to the North-West fort, and the prisoners went along with them. Soon after they got out, I saw Mr. Duncan Cameron meet the people, and encourage them not to be afraid, and they were taken to the North-West fort, where I afterwards saw a part of them. I saw two of the brass-pieces in the North-West fort at the time I went there with Mr. White, Mr. Archibald M'Donald, and a constable, with a warrant from Mr. Miles Macdonell to search for, and demand, the stolen property. There was a large party went, but only the four I have mentioned were allowed to enter the fort.

Attorney-General. Did you obtain the cannon from Mr. Cameron?

Mr. Bourke. No, we did not: he said they were in his possession, and he would take good care to keep them, and as there was an armed force drawn up in the fort, we could not execute the warrant of the Magistrate. I believe I have frequently seen the prisoners afterwards among the North-West Company's people. They deserted our fort at that time, and I never afterwards served them with provisions; they went away altogether. I saw one of the cannon afterwards at a battery lower down upon the river, which had been erected by the North-West people to annoy us.

Attorney-General. I omitted, I believe, to ask you whether the prisoners were armed? I would also ask if the settlers, on the morning the cannon were taken away, were generally armed with clubs?

Mr. Bourke. I cannot say that it was clubs that the party generally were armed with, but they had sticks, and I cannot say about the prisoners. The Red River country is in the Indian territory, being situated in the neighbourhood of the Lake and River Winnipic. The Earl of Selkirk had a colony called The Red River Settlement.

went to it in 1813, and remained there till we were all drove away by the North-West people in 1815. The Red River Settlement was situated near the forks of the Red River, as they are usually called: the forks are formed by the junction of the Red and the Ossiniboine Rivers. The cannon were taken from Fort Douglas, from the dwelling house of some of the men, and were taken to the North-West fort, which was about half a mile distance, to Fort Gibraltar, where they were received by Mr. Cameron; or rather, he went with them, for he met the settlers with them, and was accompanied by a number of men.

Attorney-General. And the cannon, together with the house from which they were taken, were the property of the Earl of Selkirk?

Mr. Bourke. They were, the one and the other.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. Do you know what Lord Selkirk's possession was? I mean, what right he had to them? How they came to be his property? Because they are rather an extraordinary property for a nobleman to be possessed of.

Mr. Bourke. They were given into my care as such; they came to me with his other property, and I took them to be such. I never asked any questions about how he came to have such property.

Mr. Sherwood. Were they upon carriages, or mounted?

Mr. Bourke. No, they were not.

Mr. Sherwood. Had they not been mounted a short time before?

Mr. Bourke. No, they had not, to my knowledge.

Mr. Sherwood. Were they not on carriages on Christmas-day, and had they not been for some time before that day?

Mr. Bourke. I do not know that they were.

Mr. Sherwood. Do you not know, or I will ask you, were there not carriages there for them?

The *Attorney* and *Solicitor-General* objected to the course of questions put, and called upon the counsel for the

prisoners to state to the Court the nature of the answer he expected to receive.

Mr. Sherwood said that the questions he had put were directly in point, as it was not merely a taking away of the property of another which it is necessary to shew, but also the *animus furandi*. In this opinion he was supported by my Lord Hale, p. 508, sect. 3, vol. i. "As it is *cepit* and *asportavit*, so it must be *felonicè*, or *animo furandi*, "otherwise it is no felony, for it is the mind that makes the "taking of another's goods to be a felony, or a bare trespass only; but because the intention and mind are secret, "the intention must be judged by the circumstances of "the fact." My Lord Hale then goes on to state a variety of instances, so as to elucidate the sound principle, that in the absence of the *animus furandi*, although property is taken away, it is only a trespass that is committed. Amongst the cases put by the learned Judge, is one completely in point to that at present before your Lordships. "If A. takes away the goods of B. openly before him, or "other persons (otherwise than by apparent robbery,) "this carries with it an evidence only of a trespass, because "done openly in the presence of the owner, or of other "persons that are known to the owner." Upon the shewing of the Crown at the present moment, these cannon were removed publicly. However, the importance of the question would be made apparent, from the subsequent examination, and for the present he refused to enter into any further explanation of its tendency.

The Chief-Justice said, that in cross-examination, it was not necessary for a counsel to explain the object of his question to the Court, as it was in an examination in chief, that however the questions put on cross-examination should be founded on the answers given to questions on the examination in chief.

Mr. Sherwood. Then I will ask it him on the answer which he gave to the question as to whether they were mounted or not? His answer was, they were not. My question is, could they not be mounted? whether the

means of mounting them were not at command? (*the question being put,*)

Mr. Bourke. Two of them could be mounted, but not more.

Mr. Sherwood. And these cannon you have said were the property of the Earl of Selkirk; now, Sir, upon that answer I ask you if you happen to know how they became the property of that nobleman, being, and I have before remarked, rather a singular property for a nobleman to have in his possession?

Mr. Bourke. No, I do not; all I know I told you before, that they were given me in charge with other property belonging to Lord Selkirk, and I considered them always to be his property. They were included in the list of property given me with the keys.

Mr. Sherwood. You never heard that any of them had been taken from the North-West Company?

Mr. Bourke. No, I did not.

Mr. Sherwood. In point of fact, you do not know how they became the property of his Lordship; he might have got them from his father, for ought you know?

Mr. Bourke. I do not know but he might. I cannot say that he did not get them from his mother.

Mr. Sherwood. You have said, Sir, they were taken from a house belonging to the Earl of Selkirk, from his dwelling house. Pray, Sir, did Lord Selkirk live there?

Mr. Bourke. Lord Selkirk did not live there, but the house belonged to him; it was his property, he owned the house.

Mr. Sherwood. Who lived in it? Men, or pigs, or both?

Mr. Bourke. The people employed in the fort lived in it.

Mr. Sherwood. And did the hogs belonging to the fort live there? On your oath was it not a hog-stye?

Mr. Bourke. No, it was not. It was a dwelling house?

Mr. Sherwood. Did any body sleep in it? were there any chambers? any bed-rooms?

Mr. Bourke. People did sleep in it regularly.

Mr. Sherwood. And, I ask you again, did not pigs sleep in it as regularly? Were not pigs constantly kept there?

Mr. Bourke. Yes, I believe there were.

Mr. Sherwood. Was the place in which they were kept, one of the chambers of which you have spoken as being so regularly occupied?

Mr. Bourke. I do not know exactly where they were kept.

Mr. Sherwood. But you surely know whether the hogs were in the bed-chamber? Should you put a hog into your bed-room?

Mr. Bourke. In that country perhaps we might, on a chance.

Mr. Sherwood. The pigs were not in his Lordship's bed-chamber, were they? They did not sleep together I suppose?

Mr. Bourke. I do not know whether I am obliged to answer such questions, but I told you before, that Lord Selkirk did not live there, but that the house belonged to him.

Mr. Sherwood. You said it was his dwelling house?

Mr. Bourke. I said it was a dwelling house belonging to the Earl of Selkirk, and used as such by his people, but I told you distinctly, that he did not live there.

Mr. Sherwood. And at last we see that this dwelling house of the Earl of Selkirk was a pig-pen. These people who took away the cannon were, I believe, settlers, and not servants to the Hudson's Bay Company.

Mr. Bourke. They were settlers sent out by Lord Selkirk.

Mr. Sherwood. There is a difference, is there not, between his Lordship's settlers and the Company's settlers?

Mr. Bourke. Yes, there is some difference.

Mr. Sherwood. Do you happen to know whether these settlers were satisfied with their situation? whether they were satisfied with their provisions, either as to quality or quantity?

Mr. Bourke. I do not know that they were satisfied; there were some who, I believe, would not have been pleased if they had the best that could be got in York. They always had sufficient good provisions, and might have been satisfied, and I believe generally would have been so, if they had not been stirred up to discontent.

Mr. Sherwood. That will do upon this subject. I did not ask you whether they ought to have been satisfied, but if actually they were not satisfied. I will now ask you another question. Have you seen any of these good people since you have been in York attending the Court?

Mr. Bourke. I do not know if they are good people or not, but I have seen some of them at York.

Mr. Sherwood. Do they appear as well satisfied as they were at Red River, or do they desire to go back?

Mr. Bourke. I do not know any thing about them, whether they are better pleased or not.

Mr. Sherwood. You said you were serving them out provisions at the time the cannon were taken. What sort of rations had they?

Mr. Bourke. They had oatmeal, fat, pemican, and potatoes, in sufficient quantities, according to their families.

Mr. Sherwood. It was in April, I believe, that the cannon were taken away upon sleighs. Was there a good deal of snow and ice in the river.

Mr. Bourke. Yes, there was a good deal.

Mr. Sherwood. Do you call it a good climate?

Mr. Bourke. Yes, I call it a very good climate, as good as this, and better than Lower Canada.

Mr. Sherwood. You have mentioned that these people had sticks. Is it any thing so unusual in your country for people to walk with a stick, that you were surprised?

Mr. Bourke. No, not in my own country, but it was extraordinary there, and I certainly thought some harm was meant when I saw them with sticks.

Mr. Sherwood. Was it before Governor Macdonell's Proclamation that these cannon were taken?

Attorney-General. Whether my interruption is loudly exclaimed against or not, I must oppose such questions. I do, my Lords, most reluctantly interfere, but I consider them such a deviation from propriety, that I feel it an imperative duty not to permit them to be continued, without expressing my sense of their irregularity. As to the displeasure of the learned gentleman, I cannot help it; as a matter of course I must expect it, but I do appeal to your Lordships' authority to put an end to such irrelevant interrogatories, which have already extended themselves to a very unjustifiable length.

Mr. Sherwood. I have no particular wish to press the question; have done with Mr. Bourke.

Re-Examination, by the ATTORNEY-GENERAL.

Attorney-General. You have been questioned, Sir, in rather a singular manner, as to whether this was in fact a dwelling house, and the property of the Earl of Selkirk. Will you, Sir, again inform us what it was?

Mr. Bourke. It was an actual dwelling house, and belonging to the Earl of Selkirk, but inhabited by his people, who ate, drank, and slept there. Pigs might be kept there for any thing I know; but there were places partitioned off for stores and other purposes, but they were all under one roof.

MILES MACDONELL, Esquire, sworn.

Examined by the ATTORNEY-GENERAL.

Mr. Macdonell. I was there at the Red River Settlement in 1815, and for some time before. I know of some cannon being there, the property of the Earl of Selkirk. These cannon were sent out by his Lordship in his own hired ship, and arrived at the Settlement in 1812. I know

they were his own property, as I saw the account of them, that is, the bill and receipt; the cost of them was specified, but I do not exactly recollect how much it was, and they were kept at the Red River Settlement from 1812 to 1815. In the fall of 1814 they had been put up into a store-house, one end of which served as a dwelling for some of our people.

Mr. Sherwood. I hope your Lordships have taken down these answers of Mr. Macdonell, as we consider them very important; perhaps Mr. Macdonell will repeat them. (*Mr. Macdonell accordingly did repeat his answers in substance.*)

Mr. Macdonell. There were nine pieces taken away. When I came to the Settlement there were two brass three-pounders, two brass swivels, one-pounders, four iron swivels of from one to two pounds, and a small howitzer, of which I do not know the calibre, but it was a small one. Two of them were field-pieces, viz. the three-pounders; the smaller pieces are generally called swivels.

Attorney-General. Can you give us the value of them, Sir, either from your own judgment and knowledge of such articles, or from recollection of what they were charged in the account?

Mr. Macdonell. I do not recollect what the field-pieces were charged. I should suppose they might be worth thirty pounds each; they would be worth more in the Hudson's Bay territory. The swivels I do not recollect the cost of, nor can I form so good an idea of their value.

Attorney-General. It is not at all necessary, Sir, that you should value them very accurately. Say any sum that is not over-valuing them. Were the two worth twenty pounds?

Mr. Macdonell. Certainly they were worth that.

Attorney-General. Now, Sir, the iron pieces, if you please give us their value, either from your recollection of the account, or your own knowledge, observing the same rule, not to over-rate them.

Mr. Macdonell. I cannot say as to them either, though I recollect that I saw the account; but I should suppose

they might be worth from three to five pounds each, hardly so much as five pounds, but certainly they were worth three pounds each. The howitzer was worth ten or twelve dollars. The howitzer and one or two of the iron pieces were given to my charge in Hudson's Bay for the protection of the Settlement.

Attorney-General. Were they, Sir, in the store in the beginning of April in the year 1815?

Mr. Macdonell. I should think that they must have been, though, as I was not there, I cannot say positively. I left them in the store in January, dismounted, and I found, when I returned to the fort from my journey, that they were gone. Upon my return the circumstances were communicated to me under which they had been taken, as well as the place where they had been taken to. A deposition was afterwards made before me to the same effect, and in consequence, I issued a search-warrant to search the North-West fort near the Forks of the Red River, and sent Mr. Bourke and some others to execute it, and bring them back if they found them. They returned without them, but told me it was admitted by the partner of the Company in charge at the North-West fort, that they were there, but said he should take care of them, and would not allow the warrant to be executed; indeed he would only permit three or four of our people to enter the fort. I saw two of them afterwards, when the attack was made upon us in that year. A battery had been thrown up at night near the Settlement, and I saw them there in possession of the North-West Company, who had thrown up the battery. I afterwards saw them, one on each side of the door of the house where I was detained as a prisoner.

Attorney-General. Did these persons know that they were the property of the Earl of Selkirk, and that they had been stolen?

Mr. Macdonell. Yes, they must have known it, as they received them immediately they were stolen from the store, and also from my warrant for their recovery.

Attorney-General. How long did you live in the Red River country? Was it long enough to make you acquainted with its geographical situation? Is it, Sir, without the provinces of either Upper or Lower Canada, and of the United States of America?

Mr. Macdonell. It is certainly not in either province, nor in the United States. The whole of the Red River country is beyond the height of land which separates the waters running into Hudson's Bay from those of the Rivers Missouri and Mississippi. From maps I have seen, I should think it to be in between 96 and 97 degrees west longitude, or about 97, and in perhaps $49\frac{1}{2}$ degrees north latitude.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. The people employed about the fort sometimes lived in this house from which the cannon were taken, did they?

Mr. Macdonell. Not sometimes, but always; it was our permanent quarters.

Mr. Sherwood. You, I think, said that you were not at the fort when the cannon were taken away, so that perhaps you cannot say whether any body was actually living there or not at the time, or whether it was not used as a hog-stye?

Mr. Macdonell. All I can say to it is, that when I went away it was, and had for a long time before, been used as a dwelling house for the people, and there were no hogs in it, as I believe.

Mr. Sherwood. In what capacity, Sir, was you at Red River country?

Mr. Macdonell. I was there as Governor of the district of Ossiniboia, in the Hudson's Bay Territory.

Mr. Sherwood. Did you issue your warrant to recover these cannon in your capacity of Governor?

Mr. Macdonell. I was also a Justice of Peace.

Mr. Sherwood. Who appointed you Governor?

Mr. Macdonell. I was appointed by a commission from the Honourable Hudson's Bay Company.

Mr. Sherwood. And a Justice of Peace by the same authority, I suppose, which we consider no authority at all.

Mr. Macdonell. I was appointed a Justice of Peace by his Excellency Sir James Craig.

Mr. Sherwood. When, Sir, did you take the oath to act as a magistrate under the commission you speak of?

Mr. Macdonell. I took the oath in the year 1816.

Mr. Sherwood. That was after the period of issuing your warrant; it could not therefore be by virtue of the commission of Sir James Craig, that you acted in 1815, but under the assumed powers of your commission as Governor, which the North-West Company did not choose to acknowledge, and therefore would not allow the warrant to be served. Was you, Sir, ever made a prisoner yourself?

Mr. Macdonell. Yes, I was made a prisoner by a warrant for a breach of the peace, issued by some of the gentlemen of the North-West Company.

Mr. Sherwood. Were the persons who were generally denominated settlers at the colony, satisfied with their treatment?

Mr. Macdonell. They had, pretty generally speaking, been satisfied up to 1815. I understand that while I was away they became otherwise. I know that great exertions were used, and had been for some time before, to excite discontent among them; and whilst I was away, I was given to understand that these endeavours succeeded, and that the colonists did become discontented.

Mr. Sherwood. You have said, Sir, that the Red River Settlement is not within either province of Canada. Upon what do you found that opinion?

Mr. Macdonell. Upon the circumstance, that it is beyond the height of land which divides the waters which discharge themselves into Lake Erie and the St. Lawrence, from those which empty themselves into the sea, which I believe to be the boundary of the provinces.

Mr. Sherwood. Did you ever hear of any Proclamation, making it different to that issued in 1763?

Mr. Macdonell. No, I never did; I have seen the con-

stitution of 1791, and in describing the boundary, it says the same thing in relation to this country, that it is to extend to the Hudson's Bay territories.

Mr. Sherwood. The Proclamation of 1791 does not say to the Hudson's Bay territory, but to the boundary line of Hudson's Bay, which is a very material difference; and so you consider the house to be the dwelling house of the Right Honourable Thomas Earl of Selkirk; did you ever know him to put his foot into it?

Mr. Macdonell. I never knew Lord Selkirk to live in the house. I never intimated such a thing; but I considered it to be his property, and his servants lived in it, and I therefore consider it to be a dwelling-house belonging to the Earl of Selkirk.

ROBERT GUNN, sworn.

Examined by the SOLICITOR-GENERAL.

Solicitor-General. I wish to tell you, before I examine you, that if I ask you any question that, by answering, may get you into difficulty for any thing you have done relative to taking these cannon, you need not answer.

Mr. Sherwood. I only wish him to know, that he may answer every question that is put to him; he was one of those poor deluded settlers, and cannot criminate himself if he admits that he took away, or helped to take away, these cannon, so as to prevent them from being used against such as wished to leave this land of milk and honey.

Gunn. I was at the Red River Settlement in 1815, and at the early part of the spring, whilst the snow was on the ground. I know the prisoners at the bar, they were settlers at Red River. There were some cannon, but I cannot say how many, and I know they were taken away by a party of settlers. The prisoners were with that party, both of them.

Solicitor-General. Whereabouts were they, close to the sleighs?

Gunn. I cannot say exactly where they were, but I do know that they were there with the party who put the

guns on the sleigh, but I cannot say that they did any thing more than that they were there. I saw them come with the party, but I did not see them afterwards. I saw the two men at the bar along with the party who took away the cannon, but so many came, that I cannot say that I saw these two go away. I saw them come, and I saw the cannon go away, but I did not see either of them about the house afterwards.

Solicitor-General. Did you see one George Campbell among the party?

Gunn. Yes, I did; he was one that came. I do not know if there were any armed or not, they had sticks generally, but not clubs.

Solicitor-General. Was there any body in the house at the time the cannon were taken out of it?

Gunn. There was one Michael Kilbride, and a man who was sick, as I believe, but I could not be sure.

Question by a Juror. Had they all sticks or clubs?

Gunn. Yes, they had. Every man had a stick of some kind. I saw the party take out the guns, but there were so many, that I cannot say who in particular did it; the prisoners were, as I said before, with the party who took them away, but I cannot say what particular person did. I saw Mr. Bourke; he was in the store, serving out provisions, when they began to take them out, and he came and tried to prevent them, but they overpowered him, and took them away.

Question by a Juror. Did you draw provisions then?

Gunn. Yes, I did.

Juror. Is it usual in that country for a man to carry a cane or walking stick?

Gunn. Some carry them, but not generally.

Solicitor-General. Do you know what became of these guns afterwards?

Gunn. No, I do not; I cannot say that I do. I did not follow them.

Solicitor-General. Did you never see them afterwards, or some that you supposed to be them, at Fort Gibraltar?

Gunn. I did see guns like them at Fort Gibraltar, but

I cannot say they are the same, because I did not follow the party who took them away. When they were taken, they were lying on the ground, without carriages.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood. You, I believe, was one of those unfortunate people who came out to be a settler at this colony?

Gunn. Yes, I was.

Mr. Sherwood. And you was a good deal disappointed at your situation, was not you, and wished to get away?

Gunn. Yes, I certainly was, and did want very much to get away if possible.

Mr. Sherwood. Did you hear any thing said about what was to be done with these cannon if you attempted to better your condition by coming away?

Gunn. The Hudson's Bay people said, that if the settlers attempted to go away, they would be used to prevent them*.

* It would have been an easy matter to prove that the dissatisfaction, which is spoken of by this witness, as well as the witnesses produced on the Defence, viz. McKay, Bennerman, and Sutherland, was entirely produced by the insidious arts of Duncan and John Dugald Cameron, two partners of the North-West Company, and of the persons included in this indictment. In the spring of 1815, these witnesses, and twelve or fifteen others, who had likewise joined the party of the North-West Company, and deserted the Settlement, were examined before Mr. Wood, a very respectable Magistrate at York; their testimony, with very few exceptions, was that they were all well satisfied on their first arrival at Red River, and for several months afterwards; that several of them wrote to their relations in Scotland, advising them to follow; and that no general dissatisfaction existed, till after Mr. Spencer was arrested and taken away from the Settlement. They ascribed all the grievances they afterwards sustained, to the conduct of the gentleman who was appointed in his place. It is to be observed, however, that the arrest of Spencer took place immediately after Mr. Cameron's arrival in the neighbourhood, and that from this period forward every artifice was made use of to misrepresent the conduct of the gentlemen at the head of the Settlement, to alienate the affections of the settlers, and to intimidate, by threats and violence, those who could not be gained over by other means.

There was no foundation whatever for the idea of any intention on the part of Governor Macdonell, to detain any of the settlers who wished to

Mr. Sherwood. What did the settlers say to that?

Gunn. They said, to prevent their being used against themselves, they would remove them, and put them out of the way.

Mr. Sherwood. Where were the settlers going to?

Gunn. To this town of York; they had been promised a passage to this place.

Mr. Sherwood. Then they could, I suppose, have no intent to bring the cannon away to York?

Gunn. No, they could not, for it was more than a thousand miles to York, and they could not bring them, as they came in bark canoes; besides, the portages would have hindered them, if nothing else.

Mr. Sherwood. Had they any intention to sell them?

Gunn. No, for there was nobody to buy.

Mr. Sherwood. Then, in fact, as they were desirous to escape from his Lordship's bondage, they thought it best to put these cannon out of the way, for fear they should be prevented, by their being used agreeably to what they had been told.

Gunn. Yes, that was all.

Mr. Sherwood. Have you left the Settlement? How came you to come away from such a land of promise?

Gunn. I came to York myself, and I was very glad to leave that place certainly.

leave the country, or to make use of the artillery to prevent their going away. This rumour was an invention of Duncan Cameron, and was very ingeniously employed for his own purposes. The witnesses who, as above-mentioned, were examined before Mr. Wood, all stated that they had heard this rumour at second or third hand; but no one pretended that he had himself heard such a threat uttered by any of the officers of the Settlement. One, Bennerman alone, spoke of some vague expressions used by Mr. Archibald McDonald, in a moment of irritation; but even these expressions were far from amounting to such a threat as might be supposed from the examination of the witnesses brought forward on this Defence.

The affidavits of the settlers, who had been examined before Mr. Wood, were in the hands of the Attorney-General, and it is very remarkable that he should have made no attempt to bring out the truth as to this point, either in the examination of Mr. Miles Macdonell himself, or in the cross-examination of the others.

MICHAEL KILBRIDE, *sworn.**Examined by the ATTORNEY-GENERAL.*

Attorney-General. Was you for some time in the Red River country, as it is called?

Kilbride. Sure and I was, Sir, for some years. I was there in 1815 sure, and as good as I remember, there were nine pieces of cannon. Some were brass, four I believe, and four others were iron, and there was another one different to all. I don't know what sorts they might be, but there were nine altogether, I am sure. They were stored in one of Lord Selkirk's buildings belonging to the Settlement.

Attorney-General. Did any body live in the house, and who?

Kilbride. Sure, and there were, the servants lived there. I lived there myself.

Attorney-General. Did any of your wives live there?

Kilbride. There were no women lived there during the time I was there. There was one Kerrigan, and myself, who lived there.

Attorney-General. Was there any intention of removing these cannon from the store, that you know of?

Kilbride. No; if they had been let alone, they would have stopped there, but they were taken away by a large party of people belonging to the Settlement.

Attorney-General. Do you know the two prisoners? were they among the party of which you are speaking?

Kilbride. Yes, these two fellows were there.

Attorney-General. Now relate to us slowly, all that passed at the time they were taken away.

Kilbride. It was about the 5d April, 1815, at about one o'clock in the day, that George Campbell came first, then Hugh Bennerman and John Cooper came into the room where the guns were, and with a number of other persons took away the whole of them. Sure they were all alike, for they all helped to put them on the sleigh, and get them away, which they did, and took them to Cameron's fort.

Attorney-General. Then you saw no particular difference, but they all helped, the prisoners amongst the rest, and took away the cannon to Cameron's fort?

Kilbride. That's what they did indeed, Sir. We could not have hindered them from taking them, they were so many, and they guarded the doors of the buildings whilst they were taking them away. Some of them had fire-arms, George Campbell had some pocket pistols; he was at the head, and commanded the party. Campbell told me that they were come to take the field-pieces away, and I told him that he must not take them away. I was then told not to stir, and he shewed me a pair of pocket pistols.

Attorney-General. Were the two prisoners present at the time you are speaking of?

Kilbride. Yes, they were both there.

Attorney-General. Did your gentlemen not try to hinder them from being taken away?

Kilbride. There were only Mr. Archibald M'Donald, a clerk, and a Mr. White, and Mr. Bourke, there; and Mr. Bourke was not let go to tell Mr. M'Donald, who had charge of the place, and there were not more than thirty men there altogether on our side.

Attorney-General. Why could not Mr. Bourke let Mr. M'Donald know about it? how was he hindered?

Kilbride. There were sentries placed at the door of the Government House, till the guns were got away with safety. They were taken to Cameron's fort, and both the prisoners went with them.

Attorney-General. Do you know if any use was made of them by the party who took them away, or did they give them away, or sell them?

Kilbride. Not to my knowledge, I don't believe they did; they took them to Mr. Cameron's fort, and there left them?

Attorney-General. Did you see them there afterwards?

Kilbride. Yes, I did, but they were mounted then.

Attorney-General. Then it appears they might be of use, though they were not brought to York. Did you see the party after they got off with the cannon, and did you observe whether or not they were joined by another party?

Kilbride. Yes, I saw them when near the fort, and they were joined by another party. There was Mr. Cameron there, and about fifteen armed persons, who all came out, upon a signal being given that they were safe out with the cannon; the signal was firing a small arms, and then Cameron's party came out from just by, and joined the people with the cannon; when they got out they set off at a very smart rate. I was by, and heard Mr. Cameron say, "Well done, my hearty fellows; well done, my hearty fellows."

Attorney-General. Were the whole nine cannon taken out of the house, or was any part, and what, outside?

Kilbride. There were eight pieces of cannon in the house, and one outside. They were afterwards brought to within a quarter of a mile of our fort, for the purpose of making war upon us by the North-West people from Fort Gibraltar.

Attorney-General. Was you threatened by any of the party who came and took away the cannon, and were the prisoners by?

Kilbride. I was. I wanted to find Mr. Bourke, and I was threatened not to stir; the prisoners and Campbell were all there at the time, and they went away with their friends with the cannon, and then I was let go.

Attorney-General. Who lived in the house at the time the cannon were taken out of it, or who were in it?

Kilbride. There was Kerrigan, who was lying sick, and one Mary McLean. I saw two of the brass-pieces afterwards mounted at the North-West Company's fort.

Attorney-General. Are you confident that you saw the prisoners with the party, and that they went into the house, and helped to take them out, and take them away?

Kilbride. I am sure I saw them do all that, Sir.

Cross-Examination; conducted by Mr. SHERWOOD.

Mr. Sherwood. Did you come out as a settler to this colony?

Kilbride. I came out as a servant to the Hudson's Bay Company, and not as a settler.

Mr. Sherwood. Was it out of the dwelling house that these cannon were taken, or were they taken from the pig-stye, or from the store?

Kilbride. It was all the same, they were all one house, only in different parts.

Mr. Sherwood. You have spoken of pistols; pray where did you see any pistols? who had them?

Kilbride. It was Campbell that had pistols. I saw them, they were pocket pistols, he had them in his two fists.

Mr. Sherwood. You have spoken of a partner of the North-West Company; do you know that Mr. Duncan Cameron is a partner? and how do you know it?

Kilbride. I do not know that he was, he appeared like a gentleman, and seemed to have command as a partner.

Mr. Sherwood. Pray, were there any woods thereabouts?

Kilbride. No, there were not.

Mr. Sherwood. Whereabouts did Mr. Duncan Cameron's party meet them with his party?

Kilbride. He met them about twenty yalids from the Governor's house, and cried, "Well done, my hearty fellows, well done."

Mr. Sherwood. He said, well done, my brave fellows, did he?

Kilbride. Sure and he did, Sir; I heard him, and then he went along with them to the North-West fort.

Mr. Sherwood. There were some of your own countrymen with them; I suppose, who I believe frequently carry sticks, don't they?

Kilbride. There was not an Irishman among them, as I believe; some Irishmen walk with sticks, and some do not.

JOHN SMITH, *sworn in Gaelic.*

Examined by the SOLICITOR-GENERAL, through Mr. MACDONELL, as Interpreter.

Smith. I was in the Red River country in April 1815. I know that in a house belonging to Lord Selkirk, there

were a number of pieces of cannon ; but as I did not count them, I cannot say how many.

Solicitor-General. Did you ever see any of them afterwards?

Smith. Yes, I did. I saw one or two afterwards in possession of the North-West Company, at a battery which they had put up on the Frog Plains. I do not know when exactly, but it was after they had been taken away from the Settlement. I believe they were brought there against the Hudson's Bay people ; that was what I understood.

Solicitor-General. How came you to understand that?

Smith. I was brought there as a prisoner, and then I heard so. I was kept in a room, with a musket on each side of my door.

Solicitor-General. Do you know Hugh Bennerman, and the other prisoner, John Cooper?

Smith. Yes, I know them both very well.

Solicitor-General. Was you one of the settlers of the colony?

Smith. Yes, I was.

Mr. Sherwood said he had no questions to put to Smith.

HECTOR M'LEOD was put in the box. (Upon the book being offered him, he refused to be sworn until he was paid for his attendance, alleging that he had been once to Montreal upon this business, and had never received any thing. The Attorney-General and Court explained to him, that it was his duty to give his evidence, and he was sworn).

Examined by the ATTORNEY-GENERAL.

M'Leod. I was at the Settlement in the spring of the year 1815. I came out as a settler. I know there were some cannon in a store, and some out of doors. I know that they were taken away, but I cannot say the day. There were eight, or seven or eight, in the house, and one outside, but I cannot say to whom they belonged. They were taken by a party of settlers. I know both of the prisoners very well, they were with the party who came ;

but I did not see them assist. I only know that they came with the party who took them. They were carried to one of the North-West forts.

Attorney-General. To which of them? Fort Gibraltar?

M'Leod. I cannot say, there are so many forts, but it was a fort at a short distance from, and a little way above ours. They were left there, but I cannot say they were left there by the prisoners, nor can I say that I saw them take the cannon away. I saw them with the party who came and carried them away, but they were so many I cannot say who were there.

Cross-Examination, conducted by Mr. SHERWOOD.

Mr. Sherwood: Was you one of the unfortunate people called settlers, upon the Earl of Selkirk's colony?

M'Leod. I was one of the persons who came out to settle at the Red River, having engaged with his Lordship's agent.

Mr. Sherwood. Were you all very well pleased with your situation upon your arrival?

M'Leod. No, we were all very much dissatisfied, finding that nothing was as had been promised to us.

Mr. Sherwood. Where did you pass the first winter, after your landing from the vessel in which you sailed for this land of milk and honey?

M'Leod. We were obliged to remain at Hudson's Bay at one of the forts there for a long time.

Mr. Sherwood. Had you then to march a long way before you reached the land of promise through a wilderness?

M'Leod. We had to go above eight hundred miles through woods and a wilderness.

Mr. Sherwood. When you did arrive, did you find it what you expected, so that you wished to remain?

M'Leod. No, by no means, nothing like what we were told it would be; not at all what we were led to expect.

Mr. Sherwood. Did you wish to go away?

M'Leod. Yes. I should have been glad to have come away if I could. I could not come away, for I was detained.

Mr. Sherwood. Were there many of your way of thinking, that it would be better to get away if you could?

M'Leod. Yes, we were all, or very nearly so, wishing to get away, for we were not well used.

Mr. Sherwood. Do you know why the number of cannon of which you have spoken were taken away; whether it was merely to prevent their hindering you from leaving your bondage or not?

M'Leod. The cannon were taken away to prevent their being used so as to hurt the settlers who were about leaving. It was, that they might not be used to prevent them leaving.

Mr. Sherwood. Was there any reason to apprehend that they were intended to be used in that manner?

M'Leod. The general report was, that if the settlers attempted to go away, they would be fired upon with these cannon.

Mr. Sherwood. Could the settlers have brought them away to this province if they had wished to do so?

M'Leod. No, they could not, for they had only canoes to go away in.

Mr. Sherwood. How did they pass Fort Douglas at the time they went away?

M'Leod. They went away in bark canoes.

Mr. Sherwood. Do you know if they came to this town, to the town of York?

M'Leod. I always understood they did.

Mr. Sherwood. You have said they had no intention to steal these cannon. I will ask you, could they have made any use of them? were they of any value to them?

M'Leod. They could not be of any use to them, for it was not possible for them to take them away.

Mr. Sherwood. Could they have gone away without passing within the range of these cannon, had they remained at the Settlement, and they had been disposed to carry into effect the threat which was made?

M'Leod. They could not leave that country without passing the fort belonging to the Settlement.

Mr. Sherwood. I have done with M'Leod.

Re-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. Although these cannon might be of no use to the persons who took them away from the Settlement, yet they might be an object to other people, and they appear to have been considered so, and to have been used for purposes that cannot be mistaken. Do you, M^rLeod, know of any of these cannon being made any use of after they were left, as you term it, at the North-West fort?

M^rLeod. No, I cannot say that I do.

Attorney-General. Do you know that the Settlement was destroyed some time after these cannon were taken away, and the people compelled to abandon it?

M^rLeod. I know that the houses were burnt down before I came away.

Mr. Sherwood. I had hoped that upon this trial the differences between the two Companies, or the North-West Company and the Earl of Selkirk, would have been passed by. We, my Lords, have abstained from any thing calculated in the slightest degree to introduce them to notice. If the learned Attorney-General proposes to defend the conduct of the Earl of Selkirk, or his treatment of these unfortunate settlers, we should be glad to know how it is to alter the present case; how it is to assist in sustaining the singular charge against these men, of stealing nine pieces of ordnance?

Attorney-General. I do not stand here, either to defend Lord Selkirk, or his conduct to the persons who were by his authority engaged as settlers. My object is merely to shew that the colonists were forced to go away, and that these very cannon, which it is attempted to be shewn, were taken away to prevent their being used to hinder those settlers from going away who wished to depart, were afterwards used to compel those to depart who wished to remain.

Chief-Justice. The fact of taking is evident; you have only to establish the *animus furandi*. Can this do it?

Mr. Sherwood. That is the single point, my Lord; was it a felonious taking, a robbery, or was it a trespass?

Attorney-General. I shall put in the Great Seal Instrument, and on the part of the prosecution the case will be closed. The Great Seal Instrument was put in and read.

DEFENCE.

Mr. Sherwood. I wish, my Lords, before I trouble the Court with any witnesses upon the part of the prisoners, to state to the Court, that they have a clear defence on this abstract point of law; that at the utmost, it is a mere trespass which the Crown has made out, and not a larceny, much less a robbery. If, my Lords, there is no felonious intention in carrying away property, if there is no *animus furandi*, then there is no robbery, but only a trespass; and such, I submit to your Lordships, is the utmost length that the Crown have attempted to carry, or succeeded in making out, their case, supposing we bring forward no opposing or justifying evidence. So far from any thing like robbery having, upon the Crown's own shewing, been committed by these persons, it is manifest they merely helped (and the proof even of that is very vague indeed) to remove these cannon; so that a threat which had been made, very much in the spirit which governed the Settlement, that they would be used to prevent their leaving this flourishing colony, or, in other words, if they attempted to avail themselves of the humanity that would assist them in escaping from the bondage into which they had been seduced by artful misrepresentation. I say that Mr. Attorney-General has shewn no felonious intention, and that in the absence of that, I contend the Crown has not supported its charge of robbery; for if they supposed they were to be used upon them, and under that impression, though wrong—

Attorney-General. I apprehend, my Lords, that whether we have proved our case or not, is a question for your

Lordships and the Jury, and not for the learned gentleman, any more than for us to say. If the learned gentleman considers that we have not, in a legal point of view, established it, he will leave the case in your Lordships' hands, and you will direct the Jury to acquit the prisoners, if you coincide with him in opinion; but he surely will not be allowed to argue upon a question of fact, which, under your Lordships' direction, it is for the Jury to decide.

MILES MACDONELL, *Esquire, sworn.*

Examined by Mr. SHERWOOD.

Mr. Sherwood. Is it within your knowledge, that the Earl of Selkirk got back the greater part of the cannon again, or those who acted for him; perhaps he got the whole?

Mr. Macdonell. I do know that he got the greater part, but I believe not the whole.

Attorney-General. There can be no occasion to take that answer down, for it is of no consequence.

Mr. Sherwood. I differ with Mr. Attorney-General; and as it is the answer of the witness to a legal question, I beg that it may be taken down.

Attorney-General. I beg, my Lords, to submit that the cannon coming again into the possession of the owner, does not at all vary the case.

Chief-Justice. There is no knowing what use they intend to make of it, but I cannot see its bearing myself; the taking it down can do no harm.

Mr. Sherwood. The use, my Lord, that I propose to make of it is this, that I think it pretty evident that it is rather a late thought that the taking away of these cannon should be worked up into a robbery. If my Lord Selkirk or his agents had thought that it was a robbery, then he ought not to have taken them again into his possession, till they had been in due process of law proved to be his. I will not however detain your Lordships, but immediately call my next witness.

JAMES M'KAY, on the book being offered to him, objected to take the oath, unless he was paid for his attendance. One or two observations were made, when the Court directed the witness to be sworn, informing him that he was bound, under the circumstances, to give his testimony; he was then sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood. Was you one of those unfortunate people who were induced to become settlers at the Red River colony by the Earl of Selkirk or his agents in 1813?

M'Kay. I was one of Lord Selkirk's settlers, and came out in the year 1813 to Hudson's Bay.

Mr. Sherwood. Did you reach the colony that year?

M'Kay. No, we wintered in Hudson's Bay.

Mr. Sherwood. And in spring you journeyed hundreds of miles through the wilderness to reach it, did not you?

M'Kay. Yes, we did, we come up a long way.

Mr. Sherwood. You had some difficulties in going along, no doubt; but when you got to the Settlement in the land of promise, you, I suppose, were so pleased you forgot it all; were you well satisfied with your situation?

M'Kay. We were better pleased at first than we were afterwards, for we got dissatisfied, and wished to go away.

Mr. Sherwood. What made you dissatisfied in such a fine country, such an excellent climate?

M'Kay. We could not live on the living we were allowed, and we found every thing very different to what we had been told should be our condition.

Mr. Sherwood. Did you wish to go away, or were you forced away by the North-West Company?

M'Kay. We were not forced away, we went away of ourselves, and were very glad to be able to get away.

Mr. Sherwood. Were you present at the taking away of any cannon from the store at the Settlement?

M'Kay. No, I was not, but I heard of it, and know they were taken, for it was before I came down.

Mr. Sherwood. Do you know where these cannon were when you came down from that country?

M'Kay. They were at Fort Douglas at that time.

Mr. Sherwood. Though not at the taking of them, you may perhaps know why they were taken away.

M'Kay. They were taken away because Archibald M'Donald, who was in command in the absence of Mr. Miles Macdonell, said that if the settlers attempted to go away, they should be used to prevent their passing down the river.

Mr. Sherwood. Did any of you expect any benefit from taking away these cannon, beyond that of being able to make your escape to a country where you could get a decent livelihood? Did you expect any reward for taking them away?

M'Kay. I do not believe that any body expected a sixpence of benefit from it. I am sure, for my part, that I never did.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. How can you speak of what they did, or what were their expectations, if you were not there?

M'Kay. All I can say is, I never heard of any thing being received by any body, or of any thing being expected, and that I never had, nor ever expected, any thing*.

* The following Extract from the Statement respecting Lord Selkirk's Settlement (page 30), published in 1817, by Murray, Albemarle Street, will shew with what truth it is pretended that the persons who took away the cannon received no recompence for that outrage.

"An account-book was regularly opened at Fort William, in which credits were given to forty-eight of these people, for various articles which they had plundered from the Settlement, and delivered to Cameron at his trading post.—These consisted chiefly of implements of husbandry, working tools, horses, muskets, guns, pistols, &c. &c.—Thus, in one of these accounts, appears a credit for five new guns, £10;—for a new common pistol, 15s.;—one old gun, 15s. &c. &c.—At the bottom of those accounts were generally added the sums they were to receive, and did receive, as rewards for their services against the Settlement.—Several of these persons thus obtained from the North-West Company larger sums than, in all probability, they had ever been possessed of, at any one period, in the whole course of their lives.—To many of their accounts were also subjoined, in the hand-writing of Cameron, and

WILLIAM BENNERMAN, *sworn.**Examined by Mr. Sherwood.*

Mr. Sherwood. Was you one of Lord Selkirk's settlers who came out by way of Hudson's Bay?

Bennerman. Yes, I was. I came to Red River country by Hudson's Bay.

"M'Donell," (two partners of the North-West Company) "short abstracts of the services which these deserters had respectively performed in promoting the destruction of the Settlement.—For example; —honourable mention is made of one of them (in the hand-writing of Cameron) thus—'This man joined our people in February, was a great partisan, and very useful to us ever since, and deserves something from the North-West Company—say five or six pounds.' Of another (also in Cameron's hand-writing):—'This man was also a great partisan of ours, and made himself very useful to us; he lost his three years' earning with the H. B. for joining us, and he deserves at least about £20.'—Of another (in the hand-writing of Alexander M'Donell): 'He was very desperate in our cause this spring, and deserves three or four pounds,' (signed) 'A. M'Donell.'—Of another (also in M'Donell's hand-writing): 'An active smart fellow.—Left the H. B. Company in April last—a true partisan, steady and brave.—Took a most active part in the campaign of this spring, and deserves from fifteen to twenty pounds.—He has lost about £20 by leaving the Hudson's Bay Co. a month before the expiration of his contract.' (signed) 'A. M'Donell.'—Of another (likewise in M'Donell's hand-writing): 'This man left the H. B. Co. in the month of April, owing to which he lost three years' wages.—His behaviour towards us has been that of a true partisan, steady, brave, and resolute man; and was something of a leading character among his countrymen, and deserves at least about £20.' (signed) 'A. M'Donell.'—But the truest of all true partisans appears to have been George Campbell. This man was therefore conspicuously honoured, as well as rewarded, by the North-West Company.—He was placed at table in their common hall, at Fort William, next to the partners, and above the clerks of the Company.—But this distinction (enviable as it might be!) was not sufficiently solid for Mr. Campbell.—By the direction of the partnership he received a reward of £100, which was paid to him by one of the Company's clerks. Subjoined to his account with the Company is the following honourable testimony to his merits under the hand-writing, and signature, of his friend and patron Mr. Duncan Cameron.—'This (Geo. Campbell) is a very decent man, and a great partisan, who often exposed his life for the N. W. Co.—He has been of very essential service in the transactions of Red River, and deserves at least £100, Halifax; and every other service that can be rendered to him by the North-West Company.—Rather than his merit and services should go unrewarded, I would give him a £100 myself, although I have already been a good deal out of pocket by my campaign to Red River.

" 'DUNCAN CAMERON.' "

Mr. Sherwood. Do you know of any cannon being taken away from the Settlement, and for what reason they were taken?

Bennerman. I know that there were some, and the reason they were taken was, because Archibald M'Donald had said, that if the settlers attempted to go away, they should be used against us.

Mr. Sherwood. Who was in command at that time at the Settlement, at the time Mr. Archibald M'Donald said that?

Bennerman. He was himself, in the absence of Mr. Miles Macdonell, who had gone to some other part.

Mr. Sherwood. Was there any way for you to get away if you left the cannon there?

Bennerman. No, there was not, if they chose to hinder us.

Mr. Sherwood. Is the river narrow or wide?

Bennerman. Very narrow, completely within reach of cannon.

Mr. Sherwood. Do you know of their being sold?

Bennerman. No; to my knowledge they never were. I never had any thing on account of them, nor do I think the others had.

Mr. Sherwood. Could they have been brought to Canada with you in your canoes?

Bennerman. No, we could not bring them to Canada; it is more than a thousand miles, and portages and rapids in the way, and we had only bark canoes to come away in.

Cross-Examination, conducted by the ATTORNEY-GENERAL.

Attorney-General. Are you a brother of Hugh Bennerman?

Bennerman. No, I am not, nor any relative to the prisoner Bennerman. I have known him.

Attorney-General. Were there any cannon mounted at the time they were taken away?

Bennerman. There were not any mounted in the house;

there was one on a block outside, and there were some earriages.

Attorney-General. Were the prisoners in company with the party who took the cannon away, both of them?

Bennerman. The prisoners were both in the company at the time of taking the cannon.

Attorney-General. Where were they taken to?

Bennerman. They were taken to Fort Gibraltar. I was not there at the time they were taken there, but I heard so, and I saw them afterwards in that fort.

HAMAN SUTHERLAND, sworn.

Examined by Mr. SHERWOOD.

Mr. Sherwood. Was you one of Lord Selkirk's settlers at the Red River?

Sutherland. Yes I was, I got there, I think, in 1814.

Mr. Sherwood. Was it before, or after, the taking of the pemican by your people from the North-West Company?

Sutherland. It was two or three days after, as I was told.

Mr. Sherwood. Was you satisfied with your condition?

Sutherland. No, I was very dissatisfied, for I found nothing like what I was told it was to be.

Mr. Sherwood. Were you permitted to tell your dissatisfaction to your comrades?

Sutherland. No, I was dissatisfied, but they would not allow me to say that I was.

Mr. Sherwood. Who would not allow you?

Sutherland. The officers of the Settlement would not allow it.

Mr. Sherwood. Did you express a wish to come away, to the officers of the Settlement?

Sutherland. Yes, we did, but they would not allow us to go away.

Mr. Sherwood. Were persons put under arms to prevent you going?

Attorney-General. The learned gentleman is, I think,

my Lord, a little irregular in his questions; he might ask the general question, were they dissatisfied, and did they wish to get away; but not questions of the kind he is putting just now.

Mr. Sherwood. I will just ask him, did they wish to come to York, and were they permitted?

Sutherland. We did wish to get to Canada; I do not know for York in particular; but they would not let us come.

Mr. Sherwood. How did you get away at last?

Sutherland. We asked Mr. Cameron for a passage in the North-West Company's canoes, and he gave it to us.

Mr. Sherwood. Could you go any way but by water?

Sutherland. There was no other way that we could go.

Mr. Sherwood. Had you, or any of you, any idea of taking these cannon to Canada, or of selling them, or for what were they taken?

Sutherland. Certainly not. They were taken away because the report was, that they were to be used against us, if we attempted to leave the Settlement, and we were afraid they would be.

Cross-Examination conducted by the ATTORNEY-GENERAL.

Attorney-General. Do you know Mr. Duncan Cameron, and did you never hear him tell these people, or any body, to take these cannon?

Sutherland. I never did hear him tell any body to do so.

Attorney-General. Do you know, Sir, where they were taken from, or whether the place was a dwelling house, or a place to keep pigs?

Sutherland. I do not know where they were taken from, whether it was from a hog-stye or not. I saw them on the sleigh, but did not go with the guns. I saw them afterwards at Fort Gibraltar; that is all I know about the taking of them.

Attorney-General. Were the two prisoners in the company that took them, to your knowledge?

Sutherland. They were in the company.

Attorney-General. Are you acquainted with the prisoners, and how long have you known them, and particularly Bennerman?

Sutherland. Yes, I know them both, but not much of Cooper; the other I have known from infancy.

Attorney-General. Do you consider him a good, honest man?

Sutherland. Yes, I do. I know nothing against him.

Mr. Sherwood. My Lords, we have a great number of other witnesses, but we think we may venture, without danger, to stop here, and let the case go to the Jury: this therefore is the prisoners' Defence.

CHARGE,

By Mr. Justice BOULTON.

Gentlemen of the Jury,

You have been during a few hours employed in trying the two prisoners at the bar upon the charge of stealing a number of field-pieces, or cannon, the property of the Right Honourable the Earl of Selkirk, from out of his dwelling house. In considering the case, there are only two points which require your attention: first, whether these two men, John Cooper and Hugh Bennerman, are guilty of stealing or taking away the property of the Earl of Selkirk? and, secondly, and a very nice point it is, whether they were taken with a felonious intention? for according to the most learned men in our profession, it must be proved satisfactorily, that at the time of taking, there existed what is called a *felonious intent* in English, and in Latin the *animus furandi*, because, although property may be taken away, unless the *animus furandi* is clearly established, it is not a felony, but a trespass, that is committed. The learned judge, who was referred to in the course of the trial, exemplifies this position in a variety of instances. I will state one that is familiar to you. If a man goes to a field, and takes out of it a horse

as his own, though his right to it may be questioned, yet it is not a felonious taking, because he considered he had a title to it; and if he has committed an offence, it is a trespass only, although it should actually be proved that the horse in reality belonged to his neighbour, or to some other person. The reason it would not be a felony, is, because there was no felonious intention. Apply this principle, which is law, to the case before you. These cannon were taken in broad and open day, by a large party of persons, and not by these two people alone. This is perfectly evident from the whole of the testimony, and I think it as clear that there was not, from the beginning, any intention on the part of any body to steal these cannon, and appropriate them to their own use. It is evident a large body of persons at the Red River country had been agreeing to run away to Canada; that they wanted to get rid of the Settlement, but were apprehensive they would be fired upon from these cannon, and therefore took them away, so that they might not be hindered to go down the river. If you believe the last six men who have been examined, there never was the least intention to steal, but only to prevent the cannon from being used to prevent them going away, or making their escape to the provinces of Canada*. It is, gentlemen, another of the trials resulting from the misunderstanding, and a very unhappy misunderstanding it is, of these two rival Companies. These people wanted to get away from that country, according to the evidence, because they were unhappy and miserable, and exposed to danger from the quarrel in which the

* These men, instead of stating facts, had been suffered to give their opinions to the Jury, concerning the motives which, in their judgment, influenced the prisoners in taking away the cannon, and indeed, the opinion most suitable to the cause of the prisoners was put into the mouths of witnesses; for example. *Question by Mr. Sherwood.* Do you know why the number of cannon of which you have spoken were taken away; whether it was merely to prevent their hindering you from leaving your bondage or not? *Answer by Mr. Leed.* The cannon were taken away to prevent their being used, so as to hurt the settlers who were about leaving. It was that they might not be used to prevent their leaving.

Hudson's Bay and North-West Companies were engaged. They were exposed to danger from the Indians and half-breeds, as it appears there had for some time been reason to apprehend they might come and destroy them. From whatever cause it might be, is no matter; whether it arose from the quarrel between the two great Companies, or from other causes, is of no consequence; these men, it appears, were unhappy and miserable, and were desirous to escape from their unhappy situation. They had been led to believe, how they came to believe so, is of no consequence, that these cannon might be used to prevent their getting away, and they determined to remove them out of the way. That they had no intention of purloining them is clear, from their conduct; they carried them to a distance from the place whence they were taken, and there left them*. They had no intention of selling them, or of appropriating them in any way to their own use, but merely to hinder them from being used to molest them in their intended escape. It is clear that they could not have, and indeed there is not a scintilla of evidence that proves a felonious intent, or that a robbery was committed, or intended to be committed. So far from a robbery having been committed, though the cannon were removed and were carried away, it is only a high misdemeanor, a high trespass, that they have been guilty of. I will explain to you a little of the law upon the subject. There can be no felony committed without at the same time a trespass being effected; but there may, gentlemen, be a trespass committed without at the same time committing a felony. This is very satisfactorily explained in the law quoted from Lord Hale, by the learned gentleman who conducted the Defence†. Looking then at the whole case,

* The cannon were carried by the prisoners to the strong hold of their ringleaders. And where a specific article is stolen by several individuals, it is not to be inferred, that the person who retains possession of it, is the only one who receives a benefit from the booty.

† The case cited from Lord Hale by Mr. Sherwood, and recognised by Mr. Justice Boulton, as decisive of the present, establishes, that if A. takes away the goods of B. openly before him or other persons (otherwise than by apparent robbery), this carries with it an evidence only of trespass,

according as I have it upon my notes, it is so very plain, that there is growing out of it no sort of difficulty whatever. The reading of my notes, which I have taken during the trial, would be a waste of your time, as I am sure it must be better impressed upon your minds from the attention you gave to the examination of the various witnesses who testified to the different parts of the case. It is, therefore, only necessary that I repeat to you, that there appears, from the whole, to be nothing for you to consider but the point of law I have stated to you; because, if there is not a scintilla or proof of a felonious intent, though they did take away the cannon, as I have told you before, it will amount only to a trespass. The whole case is a strange one; the part that the prisoners took has been very loosely proved, amounting to nothing more than that they were there*; if however it has been proved, to the satisfaction of your minds, that they moved one foot towards helping to take away these cannon, it will be for you then to determine, whether they were so taken with the intent to steal them or not. If you believe the last evidences you had before you, there was no intention of stealing them, but, on the contrary, it was only by way of precaution, that they might not be used to prevent their coming away to Canada. You will, however, say what is their offence.

because done openly in the presence of the owner, or of other persons that are known to the owner; and Mr. Justice Boulton, in the first part of his address, adduces the instance of a man who takes a horse out of a field under a questionable claim of property; and he calls upon the Jury to observe, that the cannon in the present case were taken in open day and by a large body of persons. But these cases are widely different, inasmuch as no claim or pretence of property is alleged on the part of the prisoners, and the persons having charge of the cannon carried away were restrained from personal resistance and from communication with the civil authorities, by corporal force, and the terror of death.

* The Judge cannot surely be understood, as intimating, that the crime of the prisoners would not be complete, if they countenanced a robbery of the cannon, by their presence in arms, although they never moved one foot towards the actual carrying of them away. His Lordship's expressions are, however, not so distinct on this point, as to be free from the danger of misinterpretation by the Jury.

The Jury then retired under the care of officers, and in some time returned; and the customary forms being gone through, returned a verdict of NOT GUILTY.

The Attorney-General was then asked, by the Chief-Justice, if he had any other business to bring before the Court under the Great Seal Instruments, from the Lower Province. To which he replied, that in consequence of the opinion expressed by the Court, on a former occasion, respecting the informality of some of those instruments, he had entered a *noti prosequi* in all the bills of indictment which he had preferred against persons who were sent for trial to Upper Canada, under sealed instruments, which did not specifically point out the nature of their offence. That besides these bills, there were several others found against persons for arson, and maliciously shooting, which, by the express words of the Great Seal Instruments, the Court had full authority to try, but that the persons accused were not present, nor were they bound to appear under any recognizance which he could enforce; he had therefore, moved the process of the Court against them. He added, that he had been induced to withhold any charge against certain other individuals who were to be tried for a conspiracy, because the nature of the conspiracy with which they were charged was specified in the instruments of transfer so indistinctly as to render it doubtful whether the Court would take cognizance of that offence, and that there was scarcely any evidence against those among them whose acts of hostility against the Settlement were manifest, and had led most clearly to its destruction, (the object of the conspiracy charged,) except so far as they might be proved to be connected with others over whom the Court by its determination professed to have no jurisdiction, and because this evidence went almost entirely to conduct for which the same persons had previously been put upon their trials in another shape.

THE END.

POSTSCRIPT.

*The following ought to have been inserted in a Note
at page 151.*

It appears from other evidence, that the real object of the detachment of half-breeds, here represented by one of their number, as leaving the main body and going to the river to drink, was to make captive such of the settlers as they might find on their farms. Five men and one woman were in fact seized by them, and conducted in custody to the Frog Plain. The following extract from the affidavit of Alexander Sutherland, one of these settlers, may serve to elucidate some of the allusions to this fact, which appear in the examination of several witnesses, and will also explain the *Route of Mr. Fraser* as marked on the Map prefixed to this volume.

" That in the afternoon of 19th June, the day on which the Governor and his people were killed, the deponent was at work upon his land, which is between Fort Douglas and the Frog Plain, and is the 12th lot from Fort Douglas, and the 13th, or about a mile and a half from the Frog Plain, when the deceased Messrs. Wilkinson and Holt came riding in, seemingly from the Plains; that they stopped and spoke to deponent, saying they did not believe it was true that the half-breeds were coming that day. That Messrs. Wilkinson and Holt then rode towards the Fort, that in less than three quarters of an hour afterwards deponent was surprised by five half-breeds, while still working among his potatoes: that these half-breeds were close upon deponent before he perceived them, and that one of them, Alexander Fraser, came directly from the side of the river which was to the eastward of deponent, while the others came from the cart-track leading from Fort Douglas to the Frog Plain, which was to the westward of deponent: that the said Fraser, seeing deponent throw his hoe into a bush and attempt to escape, and mistaking the hoe for a gun, called to the others, one of whom unknown to deponent spoke good English, 'kill that damned rascal on the spot, I saw him conceal his gun in the bush,' but that when several had presented their spears to deponent's body for that purpose, the others replied, 'no, no, don't kill him, it was not a gun, but a hoe with which he was working the ground.' That by this time they were all five close round deponent, who observed that their faces were horridly painted like Indians going to war, chiefly black with streaks of red. That the said Fraser then told deponent to tell them what had

“ become of Mr. Robertson, (meaning Mr. Colin Robertson,) who had re-established the Colony in the fall, and arrested Mr. Duncan Cameron, partner of the North-West Company. That deponent said that Mr. Robertson was gone to York Factory, upon which Fraser replied, ‘ you’re telling a damned lie now,’ threatening at the same time, if deponent did not tell the truth, that he would be put to instant death; that deponent repeated what he had said before, and that Fraser then said, ‘ we will secure you at any rate for the present, and when we have got hold of your gentlemen at the Fort, we shall find out your damned lies, and punish you as you deserve.’ That deponent’s field of potatoes was at a distance from the cart-track and nearer to the river, in the line of the settlers’ houses, and that the said half-breeds had quitted the common route to Frog Plain, and had come out of their way to his field when they made him prisoner. That deponent asked the aforesaid half-breed who spoke English, what was his name, and that he said, ‘ my name is an Indian, and you don’t know me.’ That deponent was afterwards brought by them to the cart-track, and conducted towards the Frog Plain, and on their way were met by another party of half-breeds armed with spears, swords, and guns, and painted the same as the others. That on meeting this party their questions were renewed concerning Mr. Robertson aforesaid, and threats and threatening gestures renewed to extort from deponent the information they seemed to expect. That Fraser and others said that, if they could catch the said Robertson, they were resolved to skin him alive and make dried meat of his flesh. That deponent’s answers that said Robertson was gone to York Factory, appeared to displease them, and at last, that deponent told them to kill him at once if that would content them, but not to be always presenting their spears to his breast. That several of them upon this were preparing to put deponent to death, and would have done so but for the one above alluded to who could speak English. That then all but three, who conducted deponent towards Frog Plain, went off towards the fort, that on his way to the Frog Plain deponent heard and, looking round, saw the firing of musketry—that two of his conductors left him to be taken to the Frog Plain at last by one only—that deponent was at first put into Laverdure’s tent, where he found Alex. Murray and his wife prisoners, who had been led down the track before the deponent—that deponent was outside of the tent when the half-breeds and other servants of the North-West Company aforesaid returned from the firing, and he saw the life of Mr. Pritchard and that of Anthony McDonald frequently threatened in the course of that evening by the said half-breeds and others. That some of them even proposed to destroy at once all the prisoners, and that they were all saved at different times by

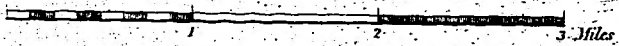
" the exertions and entreaties of the free men's wives, who are
 " all Indian women, and particularly the wife of Laverdure—
 " that deponent is persuaded, and verily believes, that if Cuth-
 " bert Grant, the leader of the half-breeds, and a clerk in the
 " employment of the North-West Company, had not been there
 " the rest would certainly have put deponent and the other
 " prisoners to death, according to their threats, and, as they
 " said, according to the orders they had received, as deponent
 " understood from Alexander Macdonell, of Qui Appelle; that the
 " said Cuthbert Grant, in interfering to prevent deponent and
 " others from being murdered, repeatedly said that in so doing,
 " he was deviating from the orders he had received, and that
 " they ought to be thankful to get off so well at his hands.
 " That during the night deponent heard many of the half-
 " breeds boast of the feats they had performed that day,
 " in the destruction of the English. That one half-breed in
 " particular, (mentioned above, as refusing to tell his name,)
 " told deponent, 'it was lucky for you that I fell in with you, else
 " 'you would now have been a dead man. I have done well
 " 'since I saw you, I have killed five myself.' That when the
 " half-breeds, and others aforesaid, were taking supper that
 " night, they offered some to deponent and fellow-prisoners,
 " which they declined. That the said Fraser told deponent,
 " 'while you are here you shall have something to eat and
 " 'drink, which is more than we will allow them in the fort;
 " 'they may have provisions,' he said, 'but it will be our
 " 'fault if they get a drop of water out of the river.' That the
 " deponent then heard them speaking of their plans to reduce
 " the fort by starvation, by erecting a concealed battery on the
 " opposite side of the river, and shooting every person who
 " should venture out of the houses for water, or any other pur-
 " pose. That they likewise explained to deponent, the man-
 " ner in which they would set the houses on fire, by throwing
 " arrows with lighted touchwood upon the roofs,—that the de-
 " ponent heard this from Grant and Fraser in particular. That
 " said Fraser likewise told deponent, to look what they had
 " already done that day, and judge what they could do, saying,
 " 'there are eight and twenty of your men dead at once, your
 " 'governor, brave as he was, was the first man that fell.' That
 " deponent also heard Grant say, that if the fort was not given
 " up next day, they would shew no more quarter. That while
 " deponent was in Bellegarde's tent, Cotonohaye, a half-breed,
 " a son of said Bellegarde a Canadian free man, arrived from
 " the scene of the massacre, bringing with him Governor
 " Semple's pistols, sword, double-barrelled gun, and white neck-
 " handkerchief; that he saw the said Cotonohaye deliver these
 " articles to his father the said Bellegarde, who receiving the
 " plunder with smiles of satisfaction put them under his bed.
 " That the deponent, next day, was allowed to go to Fort Doug-

"as, and on his way saw the bodies of the slain nearly naked,
 "with limbs and skulls fractured and covered with blood and
 "wounds—that several of their faces could hardly be distin-
 "guished, from the blackening occasioned by guns having been
 "discharged close to the skin. That deponent went in the after-
 "noon with some other settlers to bury the dead on the field where
 "they had fallen, and found them totally naked. That depo-
 "nent saw many of the Indians, and especially Peeguiss a Saul-
 "teux chief, crying like children at the distress of the colonists.
 "That deponent embarked in the boats with the other colonists,
 "and set out for Jack River; that next morning, being Sun-
 "day, they were met by a large brigade of canoes, under the
 "command of Archibald Norman McLeod, and a number of
 "his partners—that the people in said canoes shouted the war
 "whoop, and terrified the settlers nearly as much as the half-
 "breeds and others aforesaid had done—that they landed in
 "great haste, and primed their guns, so that deponent and
 "settlers, who were unarmed, expected to be killed imme-
 "diately,—that one of their chief men called out in a loud
 "voice, where is that damn'd rascal Robertson? where is that
 "damn'd rascal Pritchard? that Mr. Pritchard was imme-
 "diately taken prisoner, and put into one of their canoes,—
 "that they made all the people cross over to land, at the other
 "side of the river, where Pritchard was put as a prisoner into
 "a tent, with a sentry over him; that then the party, under
 "the direction of Mr. McLeod aforesaid, began searching for
 "papers, and broke open the governor's trunks—that depo-
 "nent observed among them two persons dressed in the king's
 "uniform, like officers, and four others, whom deponent took
 "to be a serjeant, corporal, and two privates,—that afterwards
 "the settlers were ordered to go to Netly Creek, called by the
 "North-West Company, Rivière aux Morts, where Mr. Mac-
 "donell, the sheriff, Mr. Bourke, Michael Heden, Patrick Cor-
 "coran and Donald McKay, were made prisoners by some of
 "the party under the orders of Mr. McLeod, and others afore-
 "said; at last Mr. Macdonell was liberated, and went with
 "deponent and other settlers to Jack River. That on their
 "way through Lake Winipic, and throughout the winter, at
 "Jack River, the settlers and their families were obliged to
 "depend for their subsistence mostly on the produce of their
 "nets."



PLAN
of the SETTLEMENT on
RED RIVER,
as it was in June 1816.

SCALE



AB. From a little below Frog Plain to the Forks, & thence to Catfish Creek, as also part of the lands between Red River & the Little River, has been for the most part surveyed with Chain & Compass. The rest of the Plan is laid down from Eye draughts.

- A. The place where Governor Semple and his Party were massacred on the 19th June 1816.
- B to C. Settler's Lots — established in 1814, laid waste by the North West Company in 1815, and again in 1816, & finally reestablished in 1817.
- C to D. Lots laid waste in 1815, and not since reestablished.
- E to F. Place where the Germans & Swiss of the Regiment de Meuron &c. have been settled, upon the reestablishment of the Settlement in 1817.
- G. Site of the Chapel & other Buildings erected in 1818, by Missionaries sent by the Roman Catholic Bishop of Quebec, for the Instruction of the Canadians, resident at Red River.

Plains, Prairies or Grassy Downs extending 30 or 40 Miles northward and westward, without any interruption of extensive Woods or Swamps, but occasionally varied by small Lakes, Hills, and tufts of Wood.

Plains interspersed with Tufts of Wood.

H. Cart track to Brandon House, or Riviere a la Souris

AB. This track extends to Ossiniboyne River, about ten Miles West of the point H and 20 or 30 below Portage des Prairies.

Carte might pass without difficulty in this direction

Route of the Red River on the 19th June 1816.

Fort Donnelly built August 1816. Ruins of the Houses, occupied by Governor M^cDonell in 1815, burned by the North West Company.

Site of the North West Company's trading post called Fort Gibraltar.

Catfish Creek

River or Western Branch of Red River

Woods interspersed with small Prairies

Image Plain, a good Landing Place

Frog Plain

Route of M^cFraser

M^cMcLean's

Fort Donnelly built August 1816.

Little River, called by the Canadians Riviere de la Source

SCALE

1 2 3 Miles

of the Canadians, resident at Red River.

A. From a little below Frog Plain to the Forks, & thence to Catfish Creek, as also part of the lands between Red River & the Little River, has been for the most part surveyed with Chain & Compass. The rest of the Plan is laid down from Eye draughts.

Plains, Prairies or Grassy Downs extending 30 or 40 Miles northward and westward, without any interruption of extensive Woods or Swamps, but occasionally varied by small Lakes, Hills, and tufts of Wood.

Plains interspersed with Tufts of Wood.

H. Cart track to Brandon House, or Riviere d la Souris

A. This track extends to Ossimboyne River, about ten Miles West of the point B and 20 or 30 below Portage des Prairies.

Cart might pass without difficulty in this direction

Route of the Half Breed, of the 19th June 1866

Fort Donnell built August 1865
Ruins of the Houses, occupied by Governor M^{rs} Donnell in 1865, burned by the North West Company

Site of the North West Company's trading post called Fort Gibraltar

Woods interspersed with small Prairies extending for several miles.

At this Ford the Half breed Servants of the North West Company are said to have left their Carves and loaded their Provisions on Carts on the 19th June.